

produced by RJRTC

in

HUMPHREY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,)

Plaintiffs,)

VS.)

R.J. REYNOLDS TOBACCO CO.,)

and)

THE AMERICAN TOBACCO CO.,)

Defendants.)

CASE NO. 94-2202-JWL

DEPOSITION OF JAMES KIRBY MARTIN, Ph.D.

(PART 1)

February 23, 1996

Job No. 32291

52005 1767

UNITED
REPORTING, INC

7407 OLD KATY ROAD • HOUSTON, TEXAS 77024-2198 • PHONE: (713) 681-9800 • FAX: (713) 681-2735

INDEX

	Page
Stipulations	11
Appearances	11
Testimony of JAMES KIRBY MARTIN, Ph.D.	
Examination by Mr. Leyh	13
Signature	386
Certificate	387

INDEX OF EXHIBITS

Exhibit No.		Page
1	Burton Report, written by James Martin	68
2	Burton Report -- Draft	68
3	General Presentation, November 16, 1995	68
4	Summary of medical-related articles -- Draft	68
5	Case File -- David Burton	68
6	Notice of Deposition -- James Martin	227
7	<u>Deadly Medicine: Indians and Alcohol in Early America</u> , by Peter Mancall	231
8	Springfield <u>News and Leader</u> , 1955-1960	233
9	Springfield <u>Leader & Press</u> , 1/55-6/59 and 1/60-12/60	237
10	Kansas City <u>Kansan</u> , 1954, 1957, 1962, 1964	237
11	Kansas City <u>Star</u> , 1954, 1957, 1962, 1964	242
12	Kansas City <u>Times</u> , 1962, 1964	243
13	<u>Emporia Gazette</u> , 1954-1955 and 1961-1967	243
14	Articles on Lucy Page Gaston	244
15	1919 Newspaper articles, Lucy Page Gaston	244

Produced by RJRTC

in HUMPHREY

1	16	1920 Newspaper articles, Lucy Page Gaston	247
2	17	Articles on Lucy Page Gaston	249
3	18	1921 Clean Life Movement, Lucy Page Gaston	250
4	19	1923 Newspaper articles, Lucy Page Gaston	251
5	20	1924 Newspaper articles, Lucy Page Gaston	252
6	21	Anti-Cigarette League articles	253
7	22	International Anti-Cigarette League documents	253
8	23	Library of Congress search	254
9	24	WCTU Literature	256
10	25	<u>Health</u> magazine articles	257
11	26	<u>Lookout</u> magazine articles (Part 1)	258
12	27	<u>Lookout</u> magazine articles (Part 2)	258
13	28	National Tobacco League statement, 1919	259
14	29	International and National Anti-Cigarette League documents	259
15	30	<u>The Libertarian</u> Magazine articles	260
16	31	"The Anti-Tobacco Crusade after World War I," January 1970	261
17	32	Materials from various textbooks	262

52005 1770

produced by R.J.R.T.C

in HUMPHREY

1	33	Miscellaneous articles	264
2		dealing various anti-tobacco	
		groups	
3	34	"American Literature	265
4		Awareness Survey,"	
		by Dr. R. Harp, 10/27/86	
5	35	American Cancer Society	267
6		anti-smoking public service	
7		announcements, 1966-1987	
8	36	CBS News "See It Now"	267
9		(Parts 1 and 2) Videotape	
10	37	CBS News coverage of	267
11		Surgeon General's report,	
12		1/11/64	
13	38	Congressional Record, 1929	271
14	39	Blatnik Hearings	273
15		7/18/57-7/26/57	
16	40	1964 Surgeon General's report	275
17		"Smoking and Health"	
18	41	Summary of anti-cigarette and	276
19		tobacco statutes and laws	
20		from various states	
21	42	Gallup organization survey	277
22		questions	
23	43	Gallup Poll of Public Opinion	290
24		1935-1971	
25	44	Television program	293
		transcripts	
	45	Listing of American Cancer	294
		Society public service	
		announcements (Exhibit 35)	
	46	1860-1970 Production	295
		Statistics (tobacco products)	

produced by R.J.R.T.C.

in
HUMPHREY

1	47	Circulation figures for <u>The New York Times</u> and various magazines, 1950-1965	295
2			
3	48	<u>Ayer & Son's Directory</u> title pages only, 1965	296
4			
5	49	Kansas City <u>Times</u> Circulation figures, 1962 and 1964	297
6			
7	50	Kansas City <u>Kansan</u> Circulation figures, 1954-1957, 1962 and 1964	297
8			
9	51	Springfield <u>News and Leader</u> Circulation figures, 1955-1960	297
10			
11	52	Springfield <u>Leader and Press</u> Circulation figures, 1955-1960	299
12			
13	53	Kansas City <u>Star</u> Circulation figures, 1954, 1957, 1962, 1964	299
14			
15	54	<u>Ebony</u> and <u>Jet</u> Circulation figures, 1957 and 1960	300
16			
17	55	Kansas City <u>Kansan</u> Circulation figures, 1958-1963	301
18			
19	56	Kansas City <u>Star</u> and <u>Times</u> Circulation figures, 1960	301
20			
21	57	<u>Emporia Gazette</u> Circulation figures, 1954-1965	302
22			
23	58	<u>Life</u> Circulation figures, 1950-1965	302
24			
25	59	<u>Newsweek</u> Circulation figures, 1950-1965	302
	60	<u>Time</u> Circulation figures, 1950-1965	303

1	61	<u>The New York Times</u>	303
2		Circulation figures, 1950-1965	
3	62	<u>Reader's Digest</u>	303
4		Circulation figures, 1950-1965	
5	63	Miscellaneous Anti-Cigarette materials	303
6	64	<u>Science Newsletter</u> article	304
7	65	<u>Consumer Reports</u> articles 4/51-10/65	305
8	66	<u>Total Television: A, Comprehensive Guide to Programming from 1948-1980</u>	306
9	67	<u>American Thesaurus of Slang</u> 1942, 1947, 1953	306
10	68	<u>Ladies Home Journal</u> November 1961	307
11	69	<u>To Smoke or Not to Smoke</u>	307
12	70	Deposition of David Burton, Volumes I and II, First Amended Notice, Memorandum and Order, Answers to First Amended Complaint	308
13	71	Benjamin Rush's essays	326
14	72	<u>A Counterblaste to Tobacco</u> by King James I	327
15	73	Notes of trip to Arents Collection, 7-13-94	328
16	74	<u>Mr. Fowler's Disquisition on the Evils of Using Tobacco</u> by Orin Fowler	330
17	75	<u>Tobacco: It's History, Nature and Effects on the Body and Mind.</u> by Joel Shew, M.D.	331

produced by R.J.R.T.C.

in
HUMPHREY

1	76	<u>Thoughts and Stories on Tobacco for American Lads</u>	331
2			
3	77	"A Mediation on Tobacco," November 1855, <u>National Magazine</u>	332
4			
5	78	"A New Counterblaste," December 1861, <u>Atlantic</u>	333
6			
7	79	"Tobacco: It's Use and Abuse," November 1862	333
8			
9	80	<u>The Use of Tobacco and the Evils... Resulting Therefrom</u> by John Griscom, M.D.	334
10			
11	81	"Tobaccophagoi and Tobaccophagism," 1870, by John C. Draper	334
12			
13	82	"Our Fashionable Narcotic," 1870, by Rev. Fry	335
14			
15	83	<u>The Use of Tobacco vs. Purity, Chastity and Sound Health</u> , by John Cowan, M.D.	335
16			
17	84	<u>The Tobacco Plug and Cigar</u>	336
18			
19	85	<u>Tobacco: Its Physical, Mental Moral and Social Influences</u> by B. W. Chase	336
20			
21	86	<u>Anti-Tobacco</u> by Abiel Livermore	337
22			
23	87	"The Injury of Tobacco and Its Relation to Other Durg Habits" by Charles Town	337
24			
25	88	"The Truth about Tobacco" by F. C. Walsh	338
	89	<u>The Little White Slaver</u> by Henry Ford	338
	90	<u>The Brown God and His White Imp</u>	338

produced by RJRTC

in

HUMPHREY

DEPOSITION PAGE

NOT RECEIVED

DEPONENT:

James Kirby Martin

CASE NAME:

David and Ora Burton

PAGE NO:

9

52005 1775

produced by RJRT

in
HUMPHREY

1	106	Notes of 8-28-95 telephone conversation with Shelley Bookspan	347
2			
3	107	<u>Reader's Digest</u> articles, 1924-1963	348
4			
5	108	<u>Life</u> Magazine articles from 1950s	349
6	109	<u>Ebony</u> magazine articles, 1962 and 1964	349
7			
8	110	<u>Good Health Magazine</u> articles 1899-1929	349
9			
10	111	<u>Good Health Magazine</u> articles, heart references	350
11			
12	112	<u>Good Health Magazine</u> articles, 1942-1953	350
13			
14	113	<u>Good Health Magazine</u> articles, January 1930-May 1942	350
15			
16	114	<u>Newsweek</u> articles	351
17			
18	115	<u>Time</u> articles	351
19			
20	116	<u>The New York Times</u> articles, Miscellaneous Indiana material	351
21			
22			
23			
24			
25			

1 Deposition of JAMES KIRBY MARTIN, Ph.D.,
2 taken on February 23, 1996, beginning at 9:00 a.m.,
3 at the Marriott Hotel Intercontinental-Airport,
4 18700 John F. Kennedy Boulevard, Houston, Texas
5 77032, before DONNA J. HOWSON, Certified Shorthand
6 Reporter and Notary Public in and for the State of
7 Texas, taken pursuant to notice, the Federal Rules
8 of Civil Procedure and stipulations of counsel as
9 set out herein.

10 A P P E A R A N C E S:

11 Mr. Gregory Leyh
12 Humphrey, Farrington & McClain
13 221 West Lexington, Suite 400
14 Independence, Missouri 64050
15 Counsel for Plaintiffs

16 Ms. Sydney Bosworth McDole
17 and

18 Mr. Stephen J. Kaczynski
19 Jones, Day, Reavis & Pogue
20 2300 Trammel Crow Center
21 2001 Ross Avenue
22 Dallas, Texas 75201

23 Counsel for Defendant

24 R.J. Reynolds Tobacco Company
25

A P P E A R A N C E S (Continued):

Mr. James Mirro (VIA TELEPHONE)

Chadbourn & Parke

30 Rockefeller Plaza

New York, New York 10112

Counsel for Defendant

The American Tobacco Company

produced by R.J.R.T.C.

in
HUMPHREY

1 JAMES KIRBY MARTIN, Ph.D.,
2 called as a witness, having been first duly sworn,
3 was examined and testified upon his oath as
4 follows:

5
6 EXAMINATION BY MR. LEYH:

7 Q. Good morning, Dr. Martin, my name is Greg
8 Leyh and I --

9 MR. MIRRO: Greg, I can't
10 hear what you're saying.

11 MR. LEYH: Okay. I'll
12 stipulate that any of R.J.'s
13 objections are American's
14 objections and you can just hang
15 up, if you like.

16 MR. McDOLLE: I wish you would
17 stop raising your voice to the
18 witness.

19 MR. LEYH: Oh, here we go.

20 Q. (BY MR. LEYH) Dr. Martin, have you given
21 a deposition before?

22 A. No, I have not.

23 Q. I'm sure you've been instructed as to what
24 some of the ground rules are, but let me
25 just highlight a few of them for you.

1 A. Okay.

2 Q. If you don't understand any question I
3 ask, will you stop me and say I don't
4 understand the question?

5 A. Yes, I will.

6 Q. If I don't hear that from you, I'll
7 understand that you did understand it; is
8 that fair?

9 A. Yes.

10 Q. Okay. If at any time you want to consult
11 a document in order to give an answer,
12 please feel free to do that.

13 A. Okay.

14 Q. If you need a break at any time, please
15 feel free to let me know you need a break
16 and we will take one.

17 MR. KACZYNSKI: Do you want
18 to tell him about your back?

19 Q. (BY MR. LEYH) You have a bad back?

20 A. Sometimes it acts up, and I had a bad day
21 yesterday; so we'll see what happens.

22 Q. Okay.

23 A. If I need to get up, is it okay if I just
24 stand up?

25 Q. Sure, stand up, walk around, do whatever

1 you want; just so we can be heard, that's
2 all.

3 It's important for the court
4 reporter's ability to take down a clear
5 record that you and I not be talking at
6 the same time. I'll try and pay you the
7 courtesy of allowing you to finish answers
8 before I begin the next question and ask
9 that you give me the same courtesy. Okay?

10 A. That's fine.

11 Q. Your book, Drinking in America ends with,
12 what, to me anyway, is a provocative idea;
13 and I want to draw your attention to these
14 closing sentences on page 195 of this book
15 and ask you about them.

16 You write there, "The alcohol
17 question will not be a matter of
18 eliminating alcoholism, for that seems
19 unlikely in the modern American social
20 context, but if keeping drinking within
21 limits society can tolerate," then you
22 have parenthetically, "(We hope with at
23 least some steps taken to mitigate the
24 appalling drinking-related mayhem on the
25 highways.) This attitude, no matter how

1 unpalatable the sum, may represent the new
2 consensus on drinking in America. In many
3 ways, it may also reflect a more flexible
4 return to the orderly communal ideals of
5 the past."

6 Do you want to look at that?

7 A. No.

8 Q. Let me begin by asking if your reference
9 to the "orderly communal ideals of the
10 past" is a reference to republicanism,
11 small "r."

12 A. Small "r" republicanism?

13 Q. Yes.

14 A. Both yes and no.

15 Q. Well, off to a good start.

16 A. Because we talk about puritanism and the
17 puritan ideal of the community, and that
18 is pre-republican.

19 Yes, in the sense that part of the
20 republican ideal is to have an orderly
21 community in which individuals have the
22 right to pursue their own liberties but
23 within the context of that broader social
24 order.

25 Q. Is it your opinion -- strike that. Are

1 you a small "r" republican?

2 MR. KACZYNSKI: Object to the
3 form; vague.

4 Q. (BY MR. LEYH) Do you know -- you know
5 what a small "r" republican is, I trust.

6 A. Maybe you should give me a definition.

7 Q. Do you know what a small "r" republican
8 is?

9 A. Well, according to the definition in that
10 book, a small "r" republican would be
11 someone who would be concerned about good
12 order in the community while preserving
13 individuals, the right of individuals to
14 pursue their own liberties and to have
15 some freedom in their lives.

16 Q. Is it not the case that republicanism --
17 for the sake of this conversation, we're
18 always talking about small "r"
19 republicanism. Okay?

20 A. Yes.

21 Q. Is it the case that republicanism has a
22 long and distinguished heritage?

23 A. Yes.

24 Q. Is the republicanism about which you write
25 in the book Drinking in America that

1 republicanisim which extends back through
2 Machiavelli to Aristotle in one form or
3 another?

4 A. Yes, in one form or another.

5 Q. Is that the same republicanisim about which
6 Pocock has extensively written, for
7 example?

8 MR. KACZYNSKI: Object to the
9 form.

10 A. I would say generally, yes.

11 Q. (BY MR. LEYH) Given the definition of
12 republicanisim you just provided and the
13 contextualization of that definition and
14 the history of ideas however briefly we
15 just did that, are you a small "r"
16 republican?

17 A. Well, let me answer this way: I have
18 certainly believed in the need for good
19 order in the community, and in turn, I
20 very much believe that individuals should
21 have certain basic fundamental rights and
22 freedoms to pursue their lives as they
23 would choose to pursue them.

24 Q. To me, correct me if I am mistaken, that
25 generally sounds like you are a small "r"

republican. Would that be a
misdescription of your views?

A. No.

Q. Okay. Now, you agree, do you not,
professor, that one of the central ideas
in republicanism throughout its history,
including its history in America, is a
notion of virtue in the community?

A. Yes.

Q. And what do you understand the notion of
virtue in the republican ideology to mean?

A. Serving the greater good of the whole
community; that is, shall we say, putting
aside at certain times one's own
self-interest to serve the greater good of
the whole community.

Q. So is it fair to describe republicanism as
an ideology that balances commitment to
the social good, memorialized through this
notion of virtue in part, with a
commitment to individual liberties and
rights?

A. Yes.

Q. Is it fair to say that republicanism as an
ideology in America contrasts with

- 1 negative liberty models?
- 2 A. I think you would have to tell me what you
- 3 mean by "negative liberty models."
- 4 Q. Do you know what "negative liberty" means?
- 5 A. I don't think I'm familiar with that
- 6 concept.
- 7 Q. Are you familiar with Berlin's article,
- 8 "Two Concepts of Freedom"?
- 9 A. No, I'm not.
- 10 Q. Okay. Do you know what "libertarianism"
- 11 is?
- 12 A. Only generally.
- 13 Q. What is your general understanding?
- 14 A. Are you talking libertarianism with a
- 15 large "L" or the small "l"?
- 16 Q. Let's keep it small.
- 17 A. Keep it small?
- 18 Q. Yes, keep it small.
- 19 A. Well, a small "l" libertarian would put
- 20 the emphasis upon doing as one pleases.
- 21 Q. A small "l" libertarian would be more of
- 22 an individualist than a republican; is
- 23 that fair to say?
- 24 A. Yes.
- 25 Q. Small "l" libertarian would be more likely

1 to emphasize the right of the individual
2 to exercise free choices than would a
3 republican; correct?

4 A. Yes.

5 Q. A republican would want to balance the
6 right of individuals against what virtue
7 requires; correct?

8 A. Yes.

9 Q. Okay. Now, given that understanding, what
10 role did republicanism play, if any, in
11 your understanding of prohibition?

12 A. Of prohibition?

13 Q. Uh-huh.

14 A. Well, republicans, with our small "r,"
15 argued that it was in the best interest of
16 the community for no one to have alcohol
available to them.

17 Q. Did they argue anything else that was
18 relevant to understanding prohibition?

19 A. Well, they predicated that on a group of
20 ideas that come together that alcohol and
21 alcoholism resulted in poverty, crime, and
22 various other kinds of social problems.
23 After all, behind, as the prohibitionist
24 would have it, every good tavern was a
25

1 house of ill repute; so we could put vice
2 into this category.

3 So they argued that if you
4 eliminated alcohol, you could eliminate a
5 whole host of problems for society. You
6 could make society, American society, a
7 much better place in which to live.

8 Q. Did, in fact, and I guess we're talking
9 about the first third of the century here,
10 just for the sake of --

11 A. Yes, national prohibition from 1920 to
12 1933.

13 Q. Okay. Let's talk about 1920 to 1933.

14 Did, in fact, the use of alcohol in
15 America contribute to poverty?

16 A. In some instances, yes; in some instances,
17 no.

18 Q. Can you generalize about whether or not
19 alcohol was a significant contributor to
20 poverty in the United States from 1920 to
21 1933?

22 MR. KACZYNSKI: Object to the
form.

24 A. Could you repeat the question?

25 Q. (BY MR. LEYH) Yes. Are you able -- and

1 if you're not, just say you're not. Are
2 you able to offer a general statement
3 about the extent to which alcohol
4 contributed to poverty in the United
5 States between 1920 and 1933?

6 A. What I can tell you is that
7 prohibitionists argued that drinking
8 fathers would dissipate the family income
9 and bring poverty to their household.
10 Now, whether, indeed, that was a
11 measurable reality in the 1920s is
12 somewhat difficult to determine because
13 alcohol, at least early on, wasn't readily
14 available.

15 The decade of the Twenties is known
16 as an era of enormous prosperity. The
17 terrible Great Depression began in 1929,
18 and I doubt whether alcohol was the cause
19 of the Great Depression.

20 Q. If we loosen up our historical parameters,
21 just about the twentieth century, does
22 that change your answer with regard to
23 whether or not you believe alcohol
24 contributed to poverty in America?

25 A. Well, I really haven't studied the

produced by RJRTC

in

question of whether alcohol contributed to poverty in America; rather, I have looked into what prohibitionists felt about alcohol.

Q. You don't have an opinion on that question then, the one I just asked?

A. Well, I haven't studied the question.

Q. Okay. Do you have an opinion on whether or not alcohol between 1920 and 1933 contributed to crime in America?

A. Yes.

Q. What is that opinion?

A. That opinion is that after two or three years of the so-called Noble Experiment, individuals made up their minds. They wanted alcohol and became very inventive in the ways to produce and to distribute alcohol, and that became a source of crime in the United States that was not alleviated until the end of national prohibition.

Q. What about vice between 1920 and 1933? Did alcohol contribute to vice in America?

MR. KACZYNSKI: Object to the form.

1 Q. (BY MR. LEYH) You used the word "vice," I
2 think, earlier --

3 A. Yes, I did.

4 Q. -- in reference to prostitution.

5 A. Yes, I did.

6 Q. Did you mean it more broadly than
7 prostitution, or did you mean to limit it
8 to that?

9 A. I would say probably prostitution.

10 Q. Let's talk about prostitution.

11 A. Well, investigating and looking into
12 crime, which is a very common subject with
13 respect to national prohibition because of
14 the rise of organized crime, some would
15 argue, some historians have argued there
16 was actually a decline in prostitution
17 because of the production of alcohol was
18 far more profitable than, let's say,
19 continuing -- you would, for instance,
20 turn a bordello into a distillery.

21 Q. Is that an argument to which you subscribe
22 an opinion?

23 A. In some instances, yes.

24 Q. In what instances?

25 A. I was thinking about Chicago in particular

1 and the crime syndicates in Chicago. They
2 did make a shift.

3 Q. I take it that not all prohibitionists
4 were republicans, were they?

5 A. No.

6 Q. So that the body of thought that supported
7 prohibition included ideas that
8 republicans didn't share; is that a fair
9 statement?

10 A. I'm not sure how to answer that question.
11 No example is coming to my mind.

(Ms. McDole left the
deposition room.)

12
13
14 Q. (BY MR. LEYH) I'm trying to distinguish
15 in if there's a distinction to be made, you
16 tell me, between prohibitionists as a
17 group and republicans as a group.
18 Obviously, there's a significant overlap;
19 correct?

20 A. That is correct.

21 Q. Are there differences of opinion as to the
22 role of alcohol between prohibitionists
23 and republicans?

24 MR. KACZYNSKI: The world of
25 alcohol and what; in any one of

Produced by RJRTC
in
HUMPHREY

1 these categories that you
2 described?

3 Q. (BY MR. LEYH) The world of alcohol in
4 society generally?

5 A. I think that traditional small "r"
6 republicans definitely lean toward or
7 favored the order side of the continuum,
8 good order in juxtaposition to free reign,
9 do as you will, enjoy your liberties
10 without restraints.

11 Q. In that sense, are they distinctive from
12 prohibitionists? Are they any different
13 than prohibitionists?

14 A. No, I was saying that I think that was a
15 common characteristic of prohibitionists.

16 Q. Are there differences between republicans
17 and prohibitionists as they relate to the
18 role of alcohol in society?

19 A. I would have to say that depends on the
20 particular prohibitionists and what they
21 might choose to emphasize.

22 Q. All right. Give me some examples of what
23 particular prohibitionists emphasize that
24 you think a republican wouldn't or didn't
25 subscribe to.

1 A. Well, I think I'm saying the exact
2 opposite that a good republican was a very
3 likely -- that a good republican would be
4 probably a good prohibitionist.

5 Q. But a good prohibitionist wouldn't
6 necessarily be a good republican?

7 A. A good prohibitionist?

8 Q. Would not necessarily be a good
9 republican?

10 A. A good prohibitionist was very concerned
11 about the alleged disorderly aspects of
12 drinking and alcohol in society. So I
13 would say, a good prohibitionist would
14 have some significant streak of republican
15 thinking --

16 Q. Right.

17 A. -- in the back of their minds or
18 ideologically.

19 Q. At least a streak of thinking about
20 social order whether they --

21 A. Social order, yes.

22 Q. -- understood it to have its --

23 A. That's right.

24 Q. -- roots in republicanism?

25 A. As a perception.

1 MR. KACZYNSKI: Let him
2 finish his question before you
3 answer.

4 Q. (BY MR. LEYH) I'm still unclear. Forgive
5 me, I don't mean to belabor this, but can
6 you think of any particular
7 prohibitionists who subscribed to ideas
8 about alcohol and society to which a
9 republican would not be likely to
10 subscribe?

11 A. Yes, I can give you one example, Carrie
12 Nation.

13 Q. Okay. What ideas?

14 A. Well, Carrie Nation believed that if need
15 be you had to literally rip the bars
16 down. So in an effort to bring order to
17 the community, she was a source of
18 disorder, and that would be inconsistent.

19 Q. Do you see analogies between the prohibition
20 movement we've been discussing -- strike
21 that.

22 Do you see analogies between the
23 role of republicanism in this prohibition
24 movement we've been describing and the
25 anti-tobacco forces at any time in the

1 twentieth century?

2 A. Yes.

3 Q. Would you describe what you take to be the
4 analogies, please?

5 A. I think that various individuals ranging
6 from John Harvey Kellogg to Lucy Page
7 Gaston firmly believed that if you could
8 eliminate tobacco from people's lives,
9 that would enhance the health not only of
10 the individual but of society more
11 generally.

12 Q. Any other analogies that come to your mind
13 between the republicanism in the alcohol
14 movement as compared to the republicanism
15 in the anti-tobacco movement?

16 A. Yes, I think that there was a general
17 attitude on the part of reformers that
18 they had an obligation to society to help
19 people improve their lives.

20 Q. Can you think of any other analogies,
21 professor?

22 A. Yes. One of the themes of the
23 anti-tobacco movement in the early
24 twentieth century, a theme that comes out
25 of the nineteenth century if not running

produced by RJR TC

- 1 farther back, can be encapsulated in the
2 "Don't let a good boy go bad," in that
3 phrase. I should put quotation marks
4 around that, "Don't let a good boy go
5 bad."
- 6 Q. What does that mean?
- 7 A. That means that if a young lad started to
8 use tobacco products, he would probably
9 find those tobacco products habituating;
10 and that he would probably lie about using
11 those products because it was well known
12 in society that youngsters shouldn't
13 smoke; and that the boy probably would
14 start, or at least this is what the
15 individuals would argue, a life of
16 thievery and crime in order to support his
17 particular habit.
- 18 Q. Okay. Can you think of any other
19 analogies?
- 20 A. Well, one of the themes in the early
21 twentieth century has to do with mental
22 efficiency. Let's take our hypothetical
23 boy, and the boy by virtue of using
24 tobacco and by virtue of the nicotine he
25 would be getting in his system would start

1 to have physical problems, possibly
2 develop a very common term "tobacco
3 heart," polluting the circulatory system,
4 constricting the vessels, the capillaries,
5 the arteries; and in turn, this would
6 stunt his growth, stunt his mental
7 development, affect his physical capacity
8 such as participation in athletics.

9 These would be the kinds of --
10 these would be the kinds of things that
11 would be related to that theme. And
12 obviously, such a lad could not be as good
13 a citizen and as good a servant to the
14 Republic if he was short, mentally
15 deficient, and physically enfeebled.

16 Q. Is that as many analogies as you can think
17 of, or can you think of others?

18 A. Well, I could give some other examples,
19 but I would say in items of analogies,
20 that would --

21 Q. That's a pretty good list?

22 A. -- that would represent --

23 Q. I'm sorry. Go ahead.

24 A. -- I was just going to say, what I can,
25 rather, at this particular time.

1 Q. Sure. And I realize you can just only
2 remember what you can remember. If you
3 think of some later while we're talking,
4 well, share them with me, will you?

5 A. Okay.

6 Q. Mental deficiency, then, refers to those
7 physical symptoms you described, vessel
8 constriction, tobacco heart, stunting
9 growth, and so on; correct?

10 A. That's correct.

11 Q. Do you know, and I realize that you're not
12 a medical doctor, but do you have an
13 understanding of whether, in fact, one
14 actually gets stunted growth from smoking
15 cigarettes?

16 A. No, I don't have an understanding of
17 that. I was simply giving you what these
18 individuals stated.

19 Q. So you don't know whether or not those
20 things are true: One's growth is stunted,
21 or one's mental development is stunted
22 from smoking?

23 A. No, I don't.

24 Q. Do you believe them?

25 A. Well, I haven't studied the issue, and

1 since I haven't studied the issue, it
2 would be a personal opinion. I would say
3 probably not.

4 Q. In fact, isn't it fair to say, professor,
5 that there are lots of examples from the
6 early twentieth century of alleged
7 diseases caused by activities that we
8 later learned were not actually caused by
9 those activities?

10 MR. KACZYNSKI: Object to the
11 form; vague.

12 Q. (BY MR. LEYH) Is that fair, sir?

13 A. Well, you're asking me for my personal
14 opinion, and I honestly don't know.

15 Q. Well, are you familiar with statements in
16 the early twentieth century that suggested
17 masturbation causes physical problems?

18 A. Yes.

19 Q. Do we not know that many of those
20 statements are mistaken?

21 A. That's what some people say.

22 Q. Is that what you believe?

23 A. I don't have an opinion on that subject
24 one way or the other.

25 Q. So you don't know whether or not

1 masturbation will cause a person to go
2 pale, for example?

3 A. It's not an issue I've studied. I don't
4 have an opinion.

5 Q. Okay. Don't know one way or the other,
6 then; is that right?

7 A. I just stated I don't have an opinion.

8 Q. All right. Fine. Now, the list you gave
9 me of analogies was preceded by your
10 reference to Kellogg and Gaston; do you
11 recall that?

12 A. That is correct.

13 Q. Is it fair to say, Professor Martin, that
14 the list of things you gave me and as I
15 wrote them down there was an emphasis in
16 the anti-tobacco movement eliminating
17 smoking in order to enhance health, I
18 think you said; the reformers felt they
19 had an obligation to help people improve
20 their lives; "Don't let a good boy go
21 bad"; and mental deficiency?

22 A. Yes, sir.

23 Q. Do those four themes -- is it fair to call
24 them themes in the anti-tobacco movement
25 in the twentieth century?

- 1 A. Yes.
- 2 Q. Is it fair?
- 3 A. Well --
- 4 Q. I'm sorry. Go ahead.
- 5 A. In the early twentieth century.
- 6 Q. Only in the early twentieth century?
- 7 A. Yes.
- 8 Q. Where would you say the cutoff was when
- 9 they no longer became prominent themes in
- 10 the anti-tobacco movement?
- 11 A. I would say in the period from the 1930s
- 12 to the 1950s.
- 13 Q. Is when they began to recede?
- 14 A. Recede, decline.
- 15 Q. Okay. All right. So prior to the point
- 16 at which these themes receded, would it be
- 17 fair to describe them as themes which are
- 18 anchored in both some sense of what
- 19 medical realities might be from smoking as
- 20 well as moral realities; is that a fair
- 21 thing to say about these things?
- 22 A. Yes.
- 23 Q. So they combined moral and medical
- 24 judgments; correct?
- 25 A. Yes.

1 Q. In fact, somebody like Gaston was a
2 moralist; correct?

3 A. Well, she wasn't a physician or a trained
4 scientist.

5 (Ms. McDole entered the
6 deposition room.)

7 Q. (BY MR. LEYH) All right. In fact, she
8 was primarily concerned, as were many
9 others in the anti-tobacco movement at
10 this time, in rooting out what they took
11 to be the evil character associated with
12 smoking; is that a fair statement?

13 A. Yes.

14 Q. Okay. And does that apply to Kellogg as
15 well, that he was, although not
16 exclusively concerned with moral
17 judgments, significantly concerned with
18 moral judgments about anti-tobacco?

19 A. Kellogg less so than Gaston. Kellogg was
20 a trained medical doctor; and Kellogg, I
21 think the emphasis with Kellogg would be
22 placed more on achieving the best possible
23 health.

24 Q. But you're not suggesting that Kellogg was
25 not also concerned about improving

1 character by getting people to quit
2 smoking, are you?

3 A. No.

4 Q. Is the reason you associate these themes
5 with republicanism because of the moral
6 content of these themes?

7 A. No.

8 Q. Okay. Why then do you associate these
9 themes with -- just because there's a
10 generalized notion of doing good for
11 society?

12 A. Well, I think themes evolve, and if one is
13 going to do good for society, there are
14 different ways of doing good for society
15 at different times. And questions
16 relating to good health become far more
17 prevalent within the context of
18 republicanism in the nineteenth and into
19 the twentieth centuries. Political
20 questions, perhaps, resolved recede more
21 to the background.

22 Q. All right. Do you believe that Kellogg or
23 Gaston or any of the other leaders in the
24 anti-tobacco movement at this time
25 understood themselves to be republicans?

- 1 A. They might not have described themselves
2 in those terms.
- 3 Q. Do you have any information to suggest
4 they actually thought of themselves as
5 republicans, consciously?
- 6 A. I don't recall specifically at this
7 moment.
- 8 Q. You would agree that republicanism is a
9 distinguished tradition in America?
- 10 A. Certainly a prevalent tradition in
11 America.
- 12 Q. Do you think it's not distinguished?
- 13 A. No, I said it was a prevalent tradition.
- 14 Q. My question was, is it also distinguished?
- 15 A. That calls for a value judgment, and I
16 would prefer not to make that value
17 judgment.
- 18 Q. Well, I mean your earlier remarks about
19 the passage I read from your book,
20 Drinking in America, I thought included --
21 well, let me strike that.
- 22 You say here, for example, "(We
23 hope with at least some steps taken to
24 mitigate the appalling drinking...)" ;
25 you're making a value judgment there, are

produced by RJRTC
in
HUMPHREY

1 you not?

2 A. I think we're commenting on an observable
3 fact, and that's a reference to Mothers
4 Against Drunk Driving in the rise of the
5 anti-drinking and driving movement during
6 the 1970s and the 1980s.

7 Q. So when you say, you and your coauthor
8 say, "We hope some steps will be taken to
9 mitigate," that's not a judgment you're
10 making; it's just a description?

11 A. It's a description. I would say that it's
12 a description.

13 Q. Do you think it would be a good thing if
14 steps were taken to mitigate the appalling
15 drinking-related mayhem on the highways?

16 A. I think everybody would think that would
17 be a good thing.

18 Q. And you would include yourself in that
19 category?

20 A. Yes.

21 Q. The medical component of these four
22 themes, let's talk about that for a
23 moment.

24 A. Okay.

25 Q. All right. Did the medical information

1 upon which the anti-tobacco reformers
2 relied, you know, in the early twentieth
3 century include ideological information,
4 information about cigarette smoking
5 causing specific diseases?

6 A. I would say, yes.

7 Q. Okay. Give me some examples of that
8 medical information.

9 A. There are probably lots of examples. I'll
10 try to give you a couple that I can
11 remember. Dr. Benjamin Rush writing about
12 tobacco problems in 1798 observed a person
13 with pulmonary problems who was a heavy
14 tobacco user, and he surmised that the
15 tobacco had caused the person's death.

16 There was a pamphlet in 17 -- I'm
17 sorry, 18 -- approximately 1883 by an
18 Abiel Livermore, and he talked
19 specifically about tobacco constricting
20 blood vessels and that could lead to
21 various kinds of health problems and
22 death.

23 More generally in the pamphlet
24 literature in the nineteenth century and
25 carrying into the twentieth century, the

1 pamphleteers, whether they were physicians
2 or whatever, would increasingly begin
3 their pamphlets by stating that tobacco is
4 a poison; and increasingly over time, they
5 would state specific diseases or health
6 conditions that could shorten one's life.

7 So yes, there is a pattern in the
8 pamphlet literature carrying from the
9 nineteenth into the twentieth century.

10 Q. Okay. Now, let's talk about that pattern
11 a moment. Are the examples that you just
12 gave anomalous, or did the medical
13 community of those points in time share
14 the views you attributed to those
15 individuals, Rush and Livermore and so on?

16 A. Did the medical community?

17 Q. Yes, physicians. Let's say, physicians at
18 those various points in time.

19 A. Well, I haven't studied physicians
20 necessarily at the various points in time,
21 and at that time, I would say it would
22 depend on the physician, different
23 attitudes.

24 Q. So you're not aware of any consensus among
25 physicians that Rush's views were correct

Produced by R.J.R.T.C.
in
HOMEPHILEX

1 and Livermore's views were correct and the
2 pamphleteers views were correct at the
3 various points those views were expressed?

4 A. No, I'm not aware of any consensus.

5 Q. One of the articles you cite in your
6 source material which you attached to your
7 expert report in this case is an article
8 by John Burnham on physicians. You know
9 the one I'm talking about?

10 A. Yes, I believe I do. There was one
11 Burnham essay.

12 Q. Have you read that recently?

13 A. I vaguely remember it, probably within the
14 last six months.

15 Q. I told you that Burnham says in that
16 article that there was no consensus about
17 any specific etiology, consensus of
18 community physicians prior to at least the
19 mid-Fifties, does that sound like what you
20 recall reading in Burnham's article?

MR. KACZYNSKI: Objection.

21 A. I don't recall that. What I do recall
22 from the article is that Burnham discusses
23 models of understanding, and he said the
24 model of understanding with respect to
25

Produced by RJRT in
CONFIDENTIAL

1 tobacco in the late nineteenth century was
2 a model predicated on the notion that
3 tobacco was a poison and that what he
4 calls a physiological model becomes more
5 prevalent in the early twentieth century
6 moving into the 1920s encapsulated by the
7 terms "tobacco" and "mental efficiency."

8 Q. Does he say, if you recall, that
9 physicians believed in the poison model?

10 A. I don't recall.

11 Q. You don't remember?

12 A. I don't remember.

13 Q. Okay. We'll get to this specifically
14 later, but let me just ask the question
15 since we're talking about Burnham now.
16 That source material section of your
17 report, are those materials upon which you
18 relied in writing your report?

19 A. Are you referring to the full
20 bibliography?

21 Q. Yes.

22 A. Yes.

23 Q. So those were materials that in effect
24 went into the formulation of your opinion
25 as expressed in your report in this case;

1 is that right?

2 A. Those are materials that I looked at, but
3 whether any one particular article, book,
4 or whatever played into that formulation
5 is difficult for me to say because
6 obviously not all of them agree on all
7 points.

8 Q. Right. We would have to take them up one
9 by one I guess to find out; is that right?

10 A. That's correct.

11 Q. Do you recall -- well, let's strike that.
12 Is Burnham a reputable historian in your
13 judgment, John Burnham?

14 A. I think he has his strengths and he has
15 his weaknesses.

16 Q. Well, I am going to have to follow that
17 up. What would you regard as his
18 strengths as a historian, as a social
19 historian?

20 A. I think he has opened up some very
21 interesting avenues of inquiry.

22 Q. What are they?

23 A. Well, I'm trying to recall, and it's been
24 years since I read it, a very interesting
25 article by Burnham on the prohibition

produced by R.J.R.T.C.
in
HUMPHREY

1 movement in the 1920s in which he argued
2 that at least early on the prohibition
3 movement worked; and that was very
4 different from what other historians had
5 argued up until that time.

6 Q. And did it work because it helped to
7 regulate the consumption of alcohol?

8 A. Early on, that is his argument, yes.

9 Q. Do you agree with that argument?

10 A. Within certain parameters, yes.

11 Q. What other strengths do you think Burnham
12 displays as a social historian?

13 A. I would say that he has the capacity to
14 deal with interesting questions.

15 Q. Is that rare among historians?

16 A. Yes.

17 Q. Too rare?

18 A. Yes.

19 Q. Okay. Are any of these interesting
20 questions with which you think Professor
21 Burnham has the capacity to deal related
22 to tobacco, the history of tobacco?

23 A. Yes.

24 Q. What are the interesting questions that
25 relate to tobacco history?

produced by R.J.R.T.C.

1 A. I thought, to go back to the article we
2 were discussing, his comparison of the
3 1964 Surgeon General's report with the
4 1929 statement of the Surgeon General was
5 both very, very interesting and very
6 misleading, and I think that's Burnham's
7 weakness as a historian. The two are in
8 no way comparable.

9 Q. Tell me, if you can recall, what his
10 comparison of the '64 report with the '29
11 statement was.

12 A. Well, I think he equated them as
13 co-equal. The '29 statement is very much
14 couched as a very brief statement, and it
15 is very much couched within a concern,
16 perhaps a moral concern, relating to
17 health concerns about not wanting young
18 women to end up like young boys who
19 smoke. We don't want to make a young
20 woman go bad.

21 Q. That's the '29 statement?

22 A. That's the '29 statement, yes.

23 Q. And so you're telling me, I think, that
24 the misleading part of Professor Burnham's
25 analysis is in making co-equal --

1 A. That's correct.

2 Q. -- what in fact is not co-equal?

3 A. That is correct.

4 Q. And these two statements, the report and
5 the statement, are not co-equal in your
6 opinion because the '29 statement was a
7 moral concern about women or reflected a
8 moral concern?

9 A. Reflected a moral concern about women,
10 rather than focusing specifically on the
11 issue of smoking and health, which is the
12 obvious concern of the 1964 report.

13 Q. The '64 report was more focused on medical
14 issues; is that fair?

15 A. Yes.

16 Q. Was it focused at all on moral issues
17 related to smoking?

18 A. I think there is some evidence to that
19 effect, yes.

20 Q. What is that evidence?

21 A. The report makes allusions to literature
22 studying smokers and nonsmokers, and in
23 virtually all of the studies going back to
24 the Thirties, smokers were always the more
25 intelligent focus -- I'm sorry. I said

1 that backwards. Nonsmokers were always
2 the more intelligent, the better
3 students. Smokers, of course, were at the
4 other end.

5 Q. Do you recall what those studies were that
6 led the authors of the report to draw that
7 conclusion?

8 A. The authors of what report?

9 Q. Surgeon General. Aren't you describing
10 the '64 report?

11 A. The Surgeon General's report notes that
12 literature dating back to the 1930s.

13 Q. Okay. And in your opinion, that reflects
14 a moral judgment on the part of the
15 Surgeon General's report; is that right?

16 MR. KACZYNSKI: Objection.

17 A. I really don't know.

18 Q. (BY MR. LEYH) Okay. So you're not saying
19 that there's any moral content by design
20 in the '64 Surgeon General's report; is
21 that correct?

22 A. I can't answer that question. I don't
23 know.

24 Q. Okay. So all you're aware of that is in
25 the '64 report is medical conclusions and

Produced by RJRTC
in
HUMPHRY

- 1 facts; is that a fair statement?
- 2 A. No, I just described other kinds of
- 3 material that was there.
- 4 Q. All right. Then the nonsmokers as more
- 5 intelligent material, whatever that is.
- 6 A. Yes.
- 7 Q. Is that a significant part of the '64
- 8 Surgeon General's report?
- 9 MR. KACZYNSKI: Objection.
- 10 A. Well, all I could do would be to offer you
- 11 a personal opinion.
- 12 Q. (BY MR. LEYH) That's what I'm asking for,
- 13 professor.
- 14 A. I would say probably not.
- 15 Q. You're here to give your opinions today;
- 16 do you understand?
- 17 A. Yes.
- 18 Q. In fact, the opinions in your report are
- 19 your personal opinions; are they not?
- 20 A. Based on the study of an enormous
- 21 documentary record, yes.
- 22 Q. I understand you've examined materials and
- 23 then formed opinions, and that's what
- 24 you're here to talk about; is that your
- 25 understanding of why you're here?

1 A. Yes.

2 Q. Okay. Now, is there any empirical data
3 that you're aware of to support the
4 conclusion that nonsmokers are more
5 intelligent than smokers?

6 A. There were a number of such studies
7 conducted in the early twentieth century
8 into the 1930s. Whether we would consider
9 them empirically valid, I can't say.

10 Q. You don't have an opinion on that?

11 A. Whether those studies are empirically
12 valid?

13 Q. Yes.

14 A. I've never looked at them from that point
15 of view.

16 Q. So they might be?

17 A. They might not be.

18 Q. Okay. Now, just to tie up your comments
19 on Professor Burnham, you indicated
20 initially that he had opened some new
21 areas of inquiry. Are any of those new
22 areas related to tobacco use in America?

23 A. Yes, we just discussed his article.

24 Q. Okay. Any others?

25 A. Yes.

1 Q. What are they?

2 A. Burnham is the author of a book called
3 Bad Habits.

4 Q. What is that book all about? I can guess,
5 but why don't you tell me.

6 A. Let's see. I can't remember all the bad
7 habits he got into, smoking, drinking,
8 swearing. I'm sure vice must be in there,
9 et cetera, et cetera.

10 Q. And that's a new area of inquiry?

11 A. No, I think of that as much more synthetic
12 work than a new area of inquiry.

13 Q. Is this part of his capacity to probe
14 interesting questions?

15 A. Yes.

16 Q. Okay. Do you recall what his general
17 thesis is, if he has one, in that part of
18 the book which addresses smoking?

19 A. I think that Burnham in that book argues
20 that our society in breaking free of
21 various kinds of nineteenth century
22 shackles went off in various hedonistic
23 directions in the twentieth century, and
24 that concerned him greatly as a historian
25 and as an individual.

1 Q. Does he say in his book why -- I'm only
2 interested in whatever of it deals with
3 smoking.

4 A. All right.

5 Q. Does he say in that part of the book that
6 deals with smoking why he's concerned that
7 we're going off in hedonistic directions?

8 A. No, not to my recollection.

9 Q. Do you know why he's concerned about that?

10 A. Do I know why?

11 Q. Yes.

12 A. I haven't looked at the book for years. I
13 really don't remember.

14 Q. Maybe he's a republican?

MR. KACZYNSKI: Objection.

16 A. I don't know.

17 Q. (BY MR. LEYH) Okay. Does he in the book
18 talk about hedonism?

19 A. Well, in a generalized sense, yes.

20 Q. Can you give me a little more information
21 about the way he talks about hedonism in a
22 generalized sense?

23 A. Well, that society supposedly had been
24 through a very restrained period with
25 respect to behavior, forms of behavior,

1 and that Americans were determined to
2 break free and live out the more
3 little "l" libertarian side of the
4 equation.

5 Q. Is that a misleading characterization of
6 that part of American history?

7 MR. KACZYNSKI: Objection.

8 A. As a personal opinion, I think it's an
9 overstatement.

10 Q. (BY MR. LEYH) Would you say that Bad
11 Habits, that part of Bad Habits that deals
12 with smoking, provides the reader with a
13 misleading understanding of smoking in the
14 United States?

15 A. I think it's one of the weakest parts of
16 the book.

17 Q. Okay. And have you told me all the
18 reasons why you think it's weak?

19 A. I thought he was very poorly informed on
20 the subject and had done very little
21 research.

22 Q. What in particular did he miss in terms of
23 his research?

24 A. Well, he hadn't -- and again this is
25 something, this is a book that I haven't

1 looked at for three or four years. I
2 don't remember that got into the pamphlet
3 literature that was widely available. I
4 don't believe that he made much of an
5 effort to read the information that was
6 constantly circulating through newspapers
7 both national and local. I don't recall
8 that he looked at popular culture sources.
9 I don't recall that he in looking -- did I
10 say newspapers? I'm sorry, I meant
11 magazines, popular magazines. He made no
12 attempt to determine how pervasive those
13 materials were in society, if they were
14 pervasive at all. Those are some of the
15 things that I recall.

16 Q. Stepping away from Professor Burnham, I
17 want to move into another subject in a
18 membership, but I want to ask one last
19 question about what we've talked about for
20 the last hour. Do you believe, professor,
21 that the debate about tobacco and health
22 in the United States in the twentieth
23 century has been influenced significantly
24 by political ideology, by which I mean the
25 sort of republicanism, libertarianism, and

1 those sorts of isms that we've been
2 discussing?

3 MR. KACZYNSKI: Object to the
4 form.

5 A. I would say it would be one among other
6 factors.

7 Q. (BY MR. LEYH) How many factors are there
8 that have had a significant influence on
9 the content of the debate about tobacco
10 and health in the United States in the
11 twentieth century. Is it a short list or
12 a long list?

13 A. Well, it's very difficult for me to
14 categorize. It depends on how one
15 constructs one's list.

16 Q. Construct it in any way you think
17 appropriate. You're the expert here.

18 A. Well, I do think there were common themes,
19 and we've talked about those earlier. And
20 I do believe that health questions as I
21 indicated earlier tend to become more
22 predominant over other themes as we move
23 through the twentieth century. Certainly
24 health, per se, as a subject produces one
25 large story after another in the twentieth

1 century. Some who argue the cancer scare
2 of the Fifties being perhaps the largest
3 health story of the twentieth century.
4 Those would be some of the things.

5 Q. When you talk about health as being a
6 theme throughout the twentieth century,
7 are you talking about more than what
8 physicians thought at any given time about
9 the risks of smoking. Was there a broader
10 concept than just that?

11 A. Yes.

12 Q. What else does it include? I take it, it
13 includes what physicians thought?

14 A. Yes.

15 Q. Okay. So that's one part of what you mean
16 by "health." What other parts are there
17 to that?

18 A. Well, we talked about the mental aspects;
19 we talked about the moral aspects. I'm
20 referencing back to Lucy Page Gaston.

21 Q. Okay.

22 A. Making a good boy go bad, making a good
23 girl into a sinner, et cetera.

24 Q. All right. So that when you say "health
25 questions," are you talking about views of

Produced by RJRTC

in

CONFIDENTIAL

- 1 the physicians, moral views as they relate
2 to health, and mental efficiency; is that
3 accurate?
- 4 A. Well, mental efficiency when we include
5 physical efficiency within the rubric of
6 mental efficiency.
- 7 Q. Okay. That all falls into the rubric of
8 health themes?
- 9 A. Yes.
- 10 Q. Now, stepping back one level of
11 generalization, we've got health themes
12 that are a factor in the debate about
13 tobacco, cigarette smoking, and risks in
14 the twentieth century; that's one factor.
15 We've got politics, by which I mean
16 republicanism and views of free choice and
17 all that; is that correct? Is that
18 another factor?
- 19 A. Yes.
- 20 Q. Is that an acceptable way of describing
21 that, or do you have a better way of
22 describing it?
- 23 A. No, that's fine.
- 24 Q. Okay. Now, are there any other
25 significant factors that influenced the

1 the physicians, moral views as they relate
2 to health, and mental efficiency; is that
3 accurate?

4 A. Well, mental efficiency when we include
5 physical efficiency within the rubric of
6 mental efficiency.

7 Q. Okay. That all falls into the rubric of
8 health themes?

9 A. Yes.

10 Q. Now, stepping back one level of
11 generalization, we've got health themes
12 that are a factor in the debate about
13 tobacco, cigarette smoking, and risks in
14 the twentieth century; that's one factor.
15 We've got politics, by which I mean
16 republicanism and views of free choice and
17 all that; is that correct? Is that
18 another factor?

19 A. Yes.

20 Q. Is that an acceptable way of describing
21 that, or do you have a better way of
22 describing it?

23 A. No, that's fine.

24 Q. Okay. Now, are there any other
25 significant factors that influenced the

1 content of the debate about health and
2 smoking in the United States in the
3 twentieth century?

4 A. Yes, certainly the fact that we are an
5 industrializing and urbanizing society
6 will raise certain issues that in turn
7 relate to smoking. The factory belching
8 forth its polluted fumes, the internal
9 combustion engine.

10 Q. The ability to mass produce cigarettes?

11 A. That may have been a factor, yes.

12 Certainly the rise of the modern chemical
13 industry, the production of certain toxins
14 as another form of potential pollutants in
15 an industrialized world. These factors
16 would all relate to health and in turn
17 perhaps relate to questions about smoking
18 or use of tobacco more generally.

19 Q. Okay. So by my count, we've got three
20 main factors so far; industrialization or
21 the industrializing factor, the political
22 factor, and what you call the health
23 factor as contributing to the content of
24 the debate in the twentieth century. Are
25 there any others?

1 A. I'm trying to back up because I'm not sure
2 where moral issues went, mental efficiency
3 or physical efficiency, physical health.

4 Q. Health, that's where you put them.

5 A. Okay.

6 Q. If you want to put them somewhere else,
7 please tell me. They are accounted for,
8 though.

9 A. Well, I guess that's what I can think of
10 at this particular time.

11 Q. Okay. As it relates to those three
12 general categories, you said that the
13 health questions, I think you said, tended
14 to become more prominent as we moved
15 through the twentieth century; is that a
16 fair description of the case? Is that
17 right?

18 A. Yes.

19 Q. All right. In the early part of the
20 twentieth century, which of these three
21 factors was the most important factor in
22 determining the content of the discussion
23 about tobacco and health in America?

24 A. Let's review the factors so that -- I
25 haven't necessarily put them together in

1 my mind. Could you just review what you
2 think the three are.

3 Q. I have under health, the physician's views
4 of tobacco and health, mental and physical
5 efficiency, and moral judgments about
6 health; and that's where you think you
7 mentioned Gaston.

8 A. Yes.

9 Q. Then in the second category, we've got
10 political republicanism and
11 libertarianism, whatever you think about
12 order and choice, and all of that.

13 In the third category,
14 industrializing of society, factories,
15 combustion engine, mass production of
16 cigarettes, rise in the chemical industry
17 is what my notes reflect.

18 A. Okay.

19 Q. So those are the three general factors.
20 The question again is in the early part of
21 the twentieth century, how would you rank
22 these three in terms of their importance
23 as contributors to the content of the
24 debate about tobacco and health?

25 A. Could I just back up and say that I do

1 think an important factor, I guess we
2 would put this under the health category,
3 is the rise of the scientific community.

4 Q. Okay.

5 A. So we can include that there. In the
6 early twentieth century, I would say our
7 health category would be preeminent.

8 Q. What would be the next most important
9 factor at that time?

10 A. The political.

11 Q. Okay. And generally how much more
12 important was health than the political
13 factor in the early twentieth century?

14 A. It's very difficult for me to say because
15 the two in some instances, perhaps in many
16 instances, would be working together, so
17 it's difficult to say at any particular
18 point in time whether it was Factor A or
19 Factor B.

20 Q. Fair enough. Within the health category,
21 which you have said is preeminent in the
22 early part of the twentieth century --

23 A. Okay.

24 Q. -- which of the subparts, and again I've
25 written down physicians' views, mental and

1 physical efficiency, the moral judgment,
2 and then the rise of the modern scientific
3 community as its four subparts, which of
4 those four in the early part of the
5 twentieth century is most important in
6 determining the content of the health
7 theme?

8 A. Well, again they work together at various
9 points, but I would say that the health
10 theme with respect to tobacco that is
11 emphasized in the early twentieth century
12 is that tobacco is a poison.

13 Q. Is that part of mental-physical
14 efficiency? Is part of --

15 A. Yes.

16 Q. Is it --

17 A. Well --

18 Q. I'm sorry.

19 A. Yes, if you're being poisoned, that's
20 going to affect you mentally and
21 physically.

22 Q. I am just trying to keep these organized.

23 A. I am, too.

24 Q. Okay. Is the poison theme one that the
25 majority of physicians accepted or

1 believed in in the early twentieth
2 century?

3 MR. KACZYNSKI: Objection.

4 A. I haven't really investigated that
5 question.

6 Q. (BY MR. LEYH) Okay. Would it be fair to
7 say that in the early twentieth century,
8 of these four subparts of the health
9 theme, that the rise of the scientific
10 community would be the least important at
11 this point in time?

12 A. Well, as we would define it, yes. As we
13 would define that community today with
14 organized sponsored research, that would
15 be the least significant.

16 Q. Okay. Now, how long is this order of
17 things, health, political, industrializing
18 effects, a valid ordering in the twentieth
19 century? When does the order change, if
20 at all?

21 A. Well, if I saw a factor receding, and it's
22 very, very difficult, again, because these
23 all work together, it would be -- probably
24 the political would be pushed more into
25 the background, would be less self-evident

1 as we move through the twentieth century.
2 That doesn't mean it's not there.

3 Certainly, scientific research, as
4 we define it, would become more prominent,
5 organized research would become more
6 prominent with a big burst after the
7 Second World War into the Fifties and the
8 Sixties.

9 Q. When generally does the political begin to
10 recede?

11 A. I think that prohibition was a very
12 serious blow to the kind of republicanism
13 that we have been discussing; that is, a
14 blow in the sense that prohibition seemed
15 to produce the very opposite of what these
16 individuals wanted in that by the late
17 Twenties and the early Thirties, it seemed
18 there was more crime, more vice. And
19 again with the qualification I don't think
20 the Great Depression had anything to do
21 with the elimination of alcohol, some
22 individuals implied as much that that was
23 yet another reason because poverty didn't
24 solve those problems. So that was a blow
25 to that kind of mentality that perhaps --

1 that kind of mentality, it's become less
2 prevalent.

3 Q. Has republicanism recovered from that
4 blow?

5 MR. KACZYNSKI: Objection.

6 A. I really can't evaluate that. I haven't
7 studied that, per se.

8 Q. (BY MR. LEYH) All right. Do you know if
9 it's become more prominent, or is it at
10 the same point when it receded after
11 prohibition in terms of its level of
12 importance in the debate?

13 A. I would say that there is there, but it
14 has receded.

15 Q. At any point in time since prohibition,
16 has it reemerged as a strong and vital
17 force in the debate about health and
18 tobacco?

19 A. I think there are occasional expressions
20 along that line, yes.

21 Q. What are they; can you give me examples?

22 A. Well, these are groups I don't know very
23 much about. I haven't studied, but I
24 think some of the more shrill anti-tobacco
25 groups.

1 Q. There are shrill anti-tobacco groups?

2 MR. KACZYNSKI: It's hard to
3 believe.

4 A. I know that it's difficult to believe. I
5 think they do represent that kind of
6 noblesse oblige, we're going to take care
7 of everyone and solve our problems in the
8 process.

9 Q. (BY MR. LEYH) Do you have any names?

10 A. No, I don't.

11 Q. Individual groups?

12 A. Individual groups, there are lots of them.

13 Q. I don't know who you are talking about.

14 A. Okay. I'm not thinking of any one
15 particular group, but I know there are
various groups out there.

16 Q. Are they fringe groups?

17 A. They certainly don't have significant
18 membership the way they are organized, as
19 I understand it, but I don't know very
much about them.

20 Q. Other than those shrill groups, none of
21 which you can recall right now, are there
22 any other expressions in the recent years
23 of this reemerging republicanism?
24
25

1 A. Not that I can recall at this particular
2 time.

3 THE WITNESS: Can we take a
4 break in about five?

5 MR. LEYH: We can stop now,
6 if you like.

7 THE WITNESS: Okay.
8 (Martin Exhibits Nos. 1
9 through 5 were marked for
10 identification purposes.)

11 MR. LEYH: Let's go back on
12 the record.

13 Q. (BY MR. LEYH) Professor, I'm handing you
14 a folder that contains what we've marked
15 as Exhibit 1. Would you identify what is
16 contained in Exhibit 1, please?

17 A. Exhibit 1 is the report that I prepared on
18 the David Burton case.

19 Q. And there's a binder clip. There's two
20 binder clips. Does the first binder clip
21 contain the report, your source material
22 information, and your CV, maybe not the
23 CV?

24 A. It doesn't include the CV.

25 Q. Okay. It's the source material and your

1 report?

2 A. It's the source material and the report.

3 Q. All right. What is Exhibit 2?

4 A. Exhibit 2 includes the penultimate draft
5 of the report faxed to Jones, Day on
6 January 8, 1996; and a final version of
7 the source materials, I guess this would
8 be the penultimate version of the source
9 materials, faxed to Jones, Day on,
10 according to the transmission slip,
11 January 11, 1996.

12 Q. Okay. Would you take a look at
13 Exhibit 1. I'd like to talk first of all
14 about the source materials component of
15 Exhibit 1. Would you locate that, please?

16 A. Okay.

17 Q. This is a seven-page document; is that
18 correct, professor?

19 A. Yes, and in addition, there is a listing,
20 a general listing of source materials on
21 Page 15 going to nearly the bottom of
22 Page 16.

23 Q. Of your expert report?

24 A. Of the report, yes.

25 Q. Now, with regard to the seven-page

Produced by RJRTC
in
HUMPHREY

1 document you've called "source
2 materials" --

3 A. Yes.

4 Q. -- how did you select the documents that
5 you included as source materials here?

6 A. These were materials that I read as
7 historical sources and as background
8 information in preparation for writing the
9 report.

10 Q. Okay. So you read these materials
11 sometime after you agreed to serve as an
12 expert in the Burton case?

13 A. Yes. I can't say all of them were read
14 within the last five months, if that's the
15 correct number of months since August of
16 1995.

17 Q. When you said that you read these in
18 preparation for your report in this
19 case --

20 A. Yes.

21 Q. -- what did you mean?

22 A. Well, in some instances, I was already
23 aware of the material and/or had read it
24 and re-read it. In other instances, I
25 read the material for the first time.

produced by RJRTC
in

- 1 Q. Is there a case where you had read
2 previously, some time back, an article on
3 this list but didn't re-read it for the
4 purpose of writing the report and so
5 haven't read it since you were engaged in
6 the Burton case?
- 7 A. Or haven't looked at it?
- 8 Q. Right. Haven't looked at it; haven't read
9 it?
- 10 A. No.
- 11 Q. So everything here you have at least
12 looked at in the last five months?
- 13 A. Yes.
- 14 Q. Some things you looked at more casually
15 than others; is that correct?
- 16 A. Yes.
- 17 Q. I take it your list of source materials is
18 not designed to be an exhaustive and
19 comprehensive list of all materials on
20 tobacco?
- 21 A. That is correct, no.
- 22 Q. These are things you thought were
particularly worthwhile?
- 24 A. In helping me form my opinions for this
25 case, yes.

52005 1838

1 Q. Okay. So you relied on the materials in
2 one way or another?

3 A. Yes.

4 Q. I would like you to look, if you would, at
5 the third page and in the subheading,
6 actually it is at the bottom of Page 2.
7 It's "Modern Books and Articles."

8 A. Uh-huh.

9 Q. And we will go over to Page 3, and I want
10 to ask you about a couple of items.
11 Starting with the Gideon Doran book,
12 Smoking Paradox. Do you see that about
13 halfway down?

14 A. Yes.

15 Q. Do you recall what the major thesis of
16 that book is?

17 A. Well, what I remember about the book is it
18 was heavily quantitative, and it was an
19 attempt to explain the modern rise of
20 public regulation in the cigarette
21 industry.

22 Q. Which is its subtitle, Public Regulation
23 in the Cigarette Industry.

24 A. That's correct.

25 Q. Is that one that you looked at in the last

1 five months?

2 A. Yes.

3 Q. Did you read it casually or carefully?

4 A. Casually.

5 Q. Do you recall anything about its theme
6 other than it was delivered in a
7 quantitative way?

8 A. No, I don't.

9 Q. Okay. The next book I would like to ask
10 you about is Fritschler's Smoking and
11 Politics. Do you see that?

12 A. Yes.

13 Q. Do you recall what the major thesis of
14 that book is?

15 A. Well, it's actually designed as a -- I
16 would describe it this way, as a textbook
17 for political science courses trying to
18 demonstrate to students the important role
19 that regulatory agencies play in modern
20 policy formulation, public policy
21 formulation.

22 Q. Have you read this book or looked at it in
23 the last five months?

24 A. Yes.

25 Q. Casually or carefully?

Produced by RJRTC

1 A. Casually.

2 Q. Did you rely on it in any important sense
3 in reaching your opinions in this case?

4 A. This book, as I recall, focuses on the
5 Federal Trade Commission and the role of
6 the Federal Trade Commission in movement
7 toward the Cigarette Labeling Act of 1966.

8 Q. Is that significant subject matter in your
9 opinion?

10 A. Well, I think that it certainly relates to
11 the questions that I was asked to consider
12 having to do with smoking and the
13 understanding of general awareness of
14 health issues related to smoking and the
15 increasing role of the government in
16 defining itself as an agency which would
17 play an increasingly large role in
18 informing the public that there may be
19 health risks associated with smoking.

20 Q. Would that be consistent with the
21 republican theme of government's role?

22 A. I don't necessarily associate republican
23 thinking with large government.

24 Q. I see. So you're talking about here,
25 about large government? Fritschler is, in

produced by RRTC
in

- 1 your opinion?
- 2 A. He's talking -- he's using this as a case
- 3 study in the expanding role of regulatory
- 4 agencies in public policy formulation.
- 5 Q. Does this book cover that role or subject
- 6 material that predates the Sixties?
- 7 A. I don't recall whether there's much
- 8 background information at the beginning of
- 9 the book. If it does, it's not a
- 10 consequential part of the book.
- 11 Q. Most of it would be like Seventies,
- 12 Eighties?
- 13 A. No, as I remember the book, at least the
- 14 materials that I read from the book in
- 15 going through it, the emphasis was on the
- 16 Sixties. It does carry through into the
- 17 Seventies.
- 18 Q. Okay. Is Fritschler a political
- 19 scientist?
- 20 A. Yes, I believe so.
- 21 Q. Is there -- you're at the University of
- 22 Houston now?
- 23 A. Yes.
- 24 Q. Is there at the University of Houston a
- 25 special department of political philosophy

Produced by RJCRC

- 1 or is that contained in either philosophy
2 or political science?
- 3 A. That's contained within the political
4 science department.
- 5 Q. Are you familiar with the people who teach
6 political philosophy in the political
7 science department?
- 8 A. Yes.
- 9 Q. Are they straussians?
- 10 A. I'm not honestly sure. I would say yes
11 and no because there are two of them, but
12 that would be a guess on my part.
- 13 Q. Do they tend to emphasize the immutability
14 of ideas in the history of western
15 literature; do you know?
- 16 A. I would have to call it a split, one and
17 one. I have not sat in on their courses,
18 and I don't know them that well.
- 19 Q. Well, the next book I'd like to ask you
20 about is the Troyer and Markle book.
- 21 A. Yes.
- 22 Q. Can you describe for me what that book's
23 thesis is, major thesis?
- 24 A. Troyer and Markle concern themselves with
25 the way government and society go about

produced by RJRTC
in
HUMANITY

1 the process, sometimes with plan and
2 sometimes with no plan whatsoever, of
3 defining deviant behavior; and they use
4 cigarette smoking as their focal point.
5 They offer varieties of information into
6 the process whereby society has, shall we
7 say modern American society has more or
8 less defined the smoker as a deviant.

9 Q. Generally, how is the term "deviant" used
10 in that book?

11 A. Deviant in the sense that those
12 individuals have lost rights and have been
13 placed more on the periphery of society.

14 Q. Those individuals being smokers?

15 A. Those individuals, yes, being smokers.

16 Q. Okay. So Troyer and Markle suggest in
17 this book that today smokers are deviants?
18 A. That they are treated as deviants. In
19 other words, if a smoker tried to light up
20 over there in that building I'm looking
21 at, the individual would possibly be
22 arrested and fined \$200.

23 Q. And has smoking behavior in terms of this
24 deviant model -- that's a bad question.
25 I'll withdraw that.

1 Prior to modern times, have smokers
2 been regarded as deviants in America?

3 A. No.

4 Q. So this is a new thesis?

5 A. This is a model that they present.

6 Q. Okay.

7 A. That is the concern of the book.

8 Q. And does the book suggest when smokers
9 began to be considered deviants?

10 A. Yes.

11 Q. When is that?

12 A. As I recall, and this is a guess on my
13 part, beginning in the 1970s.

14 Q. Okay. Is that a thesis that you agree
15 with, the Troyer thesis on cigarette
16 smoking and deviants?

17 A. Not necessarily.

18 Q. Do you think today cigarette smokers are
19 perceived as deviants?

20 A. On the part of some people, yes.

21 Q. On the part of the majority of the people
22 in the United States?

23 A. I have really no way of knowing. I don't
24 have any information on that one way or
25 the other.

Produced by R.J.R.T.C.
in
HOMER

- 1 Q. Do you think they're perceived as deviants
2 on the part of any particular
3 subpopulation of Americans, like the
4 medical community or government agencies
5 or some other subpopulation?
- 6 A. That's possible.
- 7 Q. Do you think it's the case?
- 8 A. Well, I'm not coming up with any specific
9 examples, so all I can say is it's
10 possible.
- 11 Q. But you can't identify any subpopulation
12 that today in your opinion perceives
13 cigarette smokers as deviants?
- 14 A. I can't think of any. Perhaps,
15 anti-smoking groups.
- 16 Q. The shrill ones or all of them?
- 17 A. I really don't know. It's not a question
18 that I've really investigated.
- 19 Q. Okay. The next book I want to address
20 with you is the Robert Smith Bader book
21 called Prohibition in Kansas.
- 22 A. Yes.
- 23 Q. Is this a book that deals exclusively with
24 alcohol?
- 25 A. That is the focus of the book, yes.

1 Q. Is there any information on cigarette
2 smoking in Kansas in that book?

3 A. That book helped me get a better sense of
4 prohibitionists' thinking in Kansas as it
5 existed in the early twentieth century.

6 Q. Again, prohibitionists' thinking about
7 alcohol; right?

8 A. That's the primary focus of the book.

9 Q. Well, is there any information about
10 attitudes in Kansas towards cigarette
11 smoking in this book?

12 A. I don't recall that there is, and I found
13 that as a point of great disappointment
14 because Kansas had an anti-cigarette law
15 on its books for approximately 18 years.

16 Q. And you thought it would be covered in
17 this book?

18 A. Well, I thought it might be, yes.

19 Q. Who is Robert Smith Bader?

20 A. He is, if I'm not mistaken, he's a
21 historian of Kansas. He does Kansas
22 history, and I believe he teaches
23 somewhere in Kansas. He may be recently
24 retired.

25 Q. He's an academic historian, you believe.

1 A. Yes, I believe so.

2 Q. Sylvia Noble Tesh, Hidden Arguments. Do
3 you see that reference?

4 A. Yes.

5 Q. What's that book about?

6 A. That book is various theories of disease
7 causation.

8 Q. Who is Tesh?

9 A. As I remember, I'm not sure whether to
10 describe her as a, I think, and this is
11 very much a guess on my part, medical
12 sociologist.

13 Q. Did you read this book carefully?

14 A. No, this was read very casually.

15 Q. But read casually within the last five
16 months?

17 A. Yes.

18 Q. Do you recall what diseases she addresses
19 in her book?

20 A. She does not -- she concerns herself more
21 with -- again, it's a book like Bader
22 where I thought there might be something
23 else there. She concerns herself more
24 with various explanations that have
25 evolved through time with respect to the

1 origins of diseases, such as the germ
2 theory of disease, or the environmental
3 theory as opposed to a hereditary theory,
4 that sort of thing. That's what I
5 remember about it.

6 Q. Do you recall anything specifically about
7 tobacco?

8 A. I think she had a few mentions, but it was
9 like Bader, a disappointment along that
10 line.

11 Q. Nothing very substantive about tobacco in
12 this book?

13 A. That's right.

14 Q. Do you know why the title, Hidden
15 Assumptions?

16 A. I believe that title refers to what she is
17 saying which is that different individuals
18 develop different, I hope I'm using this
19 word correctly, etiological explanations
20 because of the value systems that they
21 have as opposed to what some time might be
22 better explanations as to the origins of
23 disease.

24 Q. And do you have an understanding of what
25 she meant by "value systems" in that

produced by R.J.R.T.C.

- 1 context?
- 2 A. Personal beliefs.
- 3 Q. Is that different than, for example, our
- 4 discussion of ideologies?
- 5 A. Well, ideologies can well be a reflection
- 6 of personal beliefs.
- 7 Q. Do you have an opinion as to whether her
- 8 thesis with regard to the role of values
- 9 in etiological explanations is correct?
- 10 A. No.
- 11 Q. Burnham we've already discussed, I
- 12 believe. Allan Brandt, what's that
- 13 article about?
- 14 A. This article deals -- well, it's a review
- 15 of using the 1964 Surgeon General's
- 16 report. It's a review of the history of
- 17 tobacco in the twentieth century in which
- 18 in the Surgeon General's report I remember
- 19 him very specifically talking about how
- 20 inadvertently this elevated what had
- 21 heretofore been perceived as a not
- 22 terribly consequential office -- his
- 23 thesis, this isn't my thesis -- into a
- 24 powerful position in Washington.
- 25 Q. The '64 report did that according to

produced by RJRTC
in
CONFIDENTIAL

- 1 Brandt?
- 2 A. According to Brandt, if I'm not mixing
- 3 this up with another article.
- 4 Q. Is that the primary thesis as you recall
- 5 it in the Brandt article?
- 6 A. That's what I walked away from the article
- 7 with. Whether that's the primary thesis,
- 8 that's what I remember this morning.
- 9 Q. Okay.
- 10 A. Four or five or six months after I read
- 11 it.
- 12 Q. Is this one you read carefully or
- 13 casually?
- 14 A. I read the whole thing.
- 15 Q. More carefully than you read some others?
- 16 A. There are a lot of things that we read
- 17 because we think there may be something in
- 18 them, and it turns out they aren't all
- 19 that relevant to what we're doing or what
- 20 we're working on, so we put them aside.
- 21 Q. Disappointed again?
- 22 A. On this one?
- 23 Q. Yes.
- 24 A. Well, this was more historical than the
- 25 others turned out to be.

produced by RJC
in
HUMPHREY

1 Q. Who is Allen Brandt?

2 A. I'm not really completely sure. I don't
3 know whether he's a historian, but I think
4 he is an academic.

5 Q. Do you know where he teaches, if he
6 teaches?

7 A. I can't say for sure.

8 Q. On the next page under the "Medical and
9 Medical-Related Articles," I am referring
10 to the second entry there, The Bayard
11 Horton "The Outlook in Thrombo-angiitis
12 obliterans" article.

13 A. Uh-huh.

14 Q. Did you read that one casually or
15 carefully?

16 A. I read that one very casually.

17 Q. Do you recall what its thesis was?

18 A. It was a summary study of cases that
19 doctors at the Mayo Clinic had reported on
20 with respect to this particular
21 condition. This article was then picked
22 up in turn and was covered in John Harvey
23 Kellogg's Good Health Magazine, and that's
24 I believe, I took a look at it because
25 Kellogg had an article on it.

1 Q. Do you know if the medical community in
2 1938, the date at which time this article
3 was published, understood thromboangiitis
4 obliterans to be caused by cigarette
5 smoking?

6 A. No, I do not.

7 Q. Do you know at one point in time the
8 medical community, if any point in time,
9 reached a consensus that thromboangiitis
10 obliterans was caused by cigarette
11 smoking?

12 A. No.

13 Q. Do you know what thromboangiitis
14 obliterans is?

15 A. I know what it's called today, yes.

16 Q. What it's called today?

17 A. Buerger's disease.

18 Q. Do you know whether or not cigarette
19 smoking is considered a risk factor for
20 Buerger's disease?

21 A. I can't say for sure, but I believe that
22 some would say yes.

23 Q. Why do you say that?

24 A. Because articles about Buerger's disease
25 began to appear in outlets such as Good

1 Health Magazine, even in such widely
2 disseminated publications as Consumer
3 Reports in the Fifties, and that these
4 kinds of references to circulatory
5 diseases, circulatory problems were being
6 presented to the public and were being
7 associated with smoking.

8 Q. In the Fifties?

9 A. Well, this articles is in the Thirties,
10 but yes, in the Fifties.

11 Q. So in the Thirties, Forties, and Fifties?

12 A. Yes.

13 Q. Were those public expressions an
14 association between cigarette smoking and
15 circulatory disease based on medical and
16 scientific studies?

17 A. Well, this is a summary of work at this
18 Mayo Clinic involving, I don't remember,
19 several hundred cases, so I guess we would
20 call that medical and scientific; but in
21 terms of circulatory diseases and tobacco,
22 that kind of material was appearing in
23 textbooks in the early twentieth century.
24 Textbooks were used in school, in primary
25 school.

1 Q. Excuse me. Were you finished?

2 A. I was just going to say in primary school
3 textbooks.

4 Q. When you talk about circulatory disease in
5 terms of any reference at all up until,
6 say, 1955, does that term include
7 peripheral vascular disease?

8 A. It may well.

9 Q. Do you know particular expressions of an
10 association between cigarette smoking and
11 circulatory disease that appeared in any
12 of the magazines or organs you were
13 describing that specifically mentioned
14 peripheral vascular disease?

15 A. There is a specific mention of peripheral
16 vascular disease in Consumer Reports in
17 1953.

18 Q. Okay. Can you think of any others?

19 A. I can think of lots and lots of references
20 to circulatory problems and to arteries
21 and capillaries and circulatory disease
22 and atherosclerosis and arteriosclerosis.

23 Q. Do those specific references associate the
24 disease with cigarette smoking?

25 A. By and large, yes.

1 Q. What is atherosclerosis?

2 MR. KACZYNSKI: Objection.

3 A. Well, I'm not a doctor.

4 Q. (BY MR. LEYH) I'm asking for your
5 understanding, professor. I know you're
6 not a medical doctor.

7 A. I'm not a medical doctor.

8 Q. Do you know what it is?

9 A. It has to do with hardening of the
10 arteries usually related to the buildup of
11 fatty deposits in the arteries into the
12 capillaries.

13 Q. Do you know what arteriosclerosis is?

14 A. Hardening of the arteries.

15 Q. Do you know if it's different from
16 atherosclerosis?

17 A. I asked a friend of mine who was an oral
18 surgeon, he said to me he wasn't sure
19 there was much of a difference. I have to
20 stress I'm not a medical doctor.

21 Q. I understand that. Now, some of these
22 other articles in this section, we're on
23 Page 4 of your source material document,
24 is it fair to say they raise
25 epidemiological questions about cigarette

1 smoking and health?

2 A. Yes.

3 Q. How did epidemiology as a discrete
4 discipline affect the discussion of
5 smoking and health?

6 MR. KACZYNSKI: Objection.

7 A. Well, I'm not -- what I can tell you is
8 that a number of epidemiological studies
9 were undertaken beginning in -- I don't
10 want to put a fixed date on this because
11 there is a buildup. Let's say if there is
12 a critical study, it would be the 1950
13 Graham and Wynder's study listed here.
14 And this particular article studied 600
15 and some cases of cancer of the lung,
16 concludes -- and this is a retrospective
17 study looking backward at cases in hand --
18 concludes that there is a very high
19 correlation between heavy cigarette
20 smoking and cancer of the lung, which in
21 turn received enormous press coverage. It
22 became a big story.

23 Q. (BY MR. LEYH) Do you know whether or not
24 epidemiological studies from 1950 forward
25 have been a significant part of the medical

1 community's assessment of the health risks
2 associated with cigarette smoking?

3 MR. KACZYNSKI: Objection.

4 A. I haven't really studied that question.

5 Q. (BY MR. LEYH) So you don't know how
6 important epidemiological data has been to
7 Surgeons General or others in the medical
8 community?

9 A. Well, I could only guess and presume that
10 over the long run, it's one form of study
11 that has played a role in the thinking of
12 the medical community and certainly in
13 public awareness with respect to issues
14 related to smoking and health.

15 Q. Well, you've read the '64 Surgeon
16 General's report; is that right?

17 A. I haven't read the whole report.

18 Q. Do you recall anything in there about
19 epidemiological studies?

20 A. A number of these studies are referenced
21 in the Surgeon General's report.

22 Q. Have you read other Surgeons General's
23 reports?

24 A. Probably the best answer would be no,
25 because my assignment in this assignment

1 was to go into the 1960s, '65, '68 in that
2 time frame, and I think I somewhere maybe
3 have a copy of -- I can't even give you
4 the years. There's a report in 1978.

5 Q. What's it on; do you know the title?

6 A. No.

7 Q. Okay.

8 A. I haven't really cracked the cover of it.

9 Q. All right. You didn't look at it for this
10 case?

11 A. No.

12 Q. Epidemiological studies on the health risk
13 of cigarette smoking began and continued
14 after 1950; is that right?

15 A. I don't want to put -- I would say there
16 was a very significant buildup after
17 1950. I'm just using 1950 as a general
18 date.

19 Q. They weren't significant in the medical
20 community's views of the risk prior to
21 1950?

22 A. I don't have any way of evaluating that.
23 I haven't looked at that question.

24 Q. The Dorn article near the bottom of this
25 page?

1 A. Yes.

2 Q. Is that supposed to be mortality as
3 opposed to morality?

4 A. Yes, I hope so.

5 Q. I thought we were back to Kellogg there
6 for a moment.

7 A. That's right. I hadn't noticed that. I'm
8 sorry.

9 Q. Let's talk about your report if we can --

10 A. Okay.

11 Q. -- which is the other part of deposition
12 Exhibit 1. As you pointed out a few
13 minutes ago, professor, there's quite a
14 range of historical information you
15 reviewed in order to formulate your
16 opinions; is that right?

17 A. Yes.

18 Q. You, in fact, identify various categories
19 beginning on Page 2 with "A.) Laws...
20 Relating to... Education," and you have
21 "A.)," "B.)," "C.)," and I think there
22 are --

23 A. Yes.

24 Q. -- I counted eight separate categories?

25 A. Yes.

1 Q. Is that right?

2 A. That's correct.

3 Q. Now, these are general categories of
4 historical sources and information that
5 you believe are important to answering the
6 two questions you were assigned?

7 A. Yes.

8 Q. All right. Are there any other categories
9 of information that you think bear on the
10 two questions you were assigned?

11 A. I do not believe so.

12 Q. So you believe you've looked at all of the
13 relevant information for you to answer the
14 questions about the public awareness
15 regarding health risks and the public
16 awareness regarding addiction?

17 A. Generally speaking, yes.

18 Q. Well, you said "generally speaking." It
19 sounds like a qualification. Are you
20 qualifying it?

21 A. There may be some document out there that
22 I don't know about.

23 Q. I'm talking about categories, not a single
24 smoking gun document or something, just
25 general categories of information.

1 A. Yes.

2 Q. You've got all of them read and reviewed
3 for this expert opinion; is that your
4 testimony?

5 A. Yes.

6 Q. All right. Let's look at the first page,
7 the first paragraph of your expert
8 report. You say that you prepared it in
9 response to two questions you were asked
10 to investigate. Who asked you to
11 investigate?

12 A. Jones, Day.

13 Q. By the way, I've got to back up a second.
14 The articles contained in the source
15 material document we were just talking
16 about, do you have all of those in the
17 boxes that you've brought with you today?

18 A. Yes, everything is there except for the
19 secondary source material, the books.
20 Some of the ones we were talking about
21 aren't there because I got them out of the
22 library and returned them.

23 Q. Okay. When you say "secondary source
24 material," you're referring --

25 A. I'm referring to books like Susan

produced by RJRTC
in
HUMPHREY

- 1 Wagner's -- well, the books that are
2 listed here that would have in some cases
3 not much but some history, Susan Wagner,
4 Robert Sobel.
- 5 Q. So just here and there, there are things
6 that you don't have with you?
- 7 A. Books; Bader.
- 8 Q. Oh, you don't have Bader?
- 9 A. Bader is back in our library.
- 10 Q. Okay.
- 11 A. ~~Yes~~ mean is Bader here in the room?
- 12 Q. That's what I mean; is Bader in the box?
- 13 A. No Bader is not in the box. Bader, I
14 took it out of the University of Houston
15 Library. I can't remember when I returned
16 it, a couple of months ago, perhaps.
- 17 Q. Most of the items on this document that
18 you didn't bring are books; is that right?
- 19 A. That's correct.
- 20 Q. Did you bring all the articles?
- 21 A. We can look.
- 22 Q. Just give me your best recollection as you
23 sit here. We will look later.
- 24 A. I would say virtually all of the articles
25 are here, yes.

1 Q. Okay. Thanks. Now, if we could go back
2 to your expert report, please.

3 Who at Jones, Day asked you to
4 investigate?

5 A. The two attorneys that I first spoke with
6 in this case are here in the room.

7 Q. Okay. And did you receive a telephone
8 call initially?

9 A. Yes, I did.

10 Q. And were they both on the line at that
11 initial --

12 A. No, Mr. Kaczynski called me, it's in my
13 notes, on August 11th, 1995, and discussed
14 this case with me.

15 Q. Okay. Did you see those notes here, by
16 chance?

17 A. Yes, I saw them. Yes, they are there.

18 Q. Are these them?

19 A. Yes, those are all of the notes.

20 Q. Let me hand you what we've marked as
21 Exhibit 5 and ask you to identify
22 Exhibit 5.

23 A. These would be my handwritten or typed
24 notes of matters relating to this
25 particular case.

1 Q. And you've included notes of the telephone
2 call you received from Mr. Kaczynski on
3 August 11th?

4 A. Yes, I did.

5 Q. All right. And feel free to refer to
6 those notes. What exactly did he say to
7 you when he telephoned?

8 A. He told me about this particular case,
9 provided me with some background
10 information, and asked me whether I would
11 be perhaps interested or would have the
12 time to review historical questions with
13 respect to this particular case.

14 Q. Okay. How long did you talk to him at
15 that time?

16 A. I'm going to have to guess. I would say
17 we may have talked for an hour.

18 Q. Did you during the course of that
19 conversation share some of your ideas with
20 him about the history of tobacco in the
21 United States?

22 A. Well, we had had conversations before,
23 many.

24 Q. You and Mr. Kaczynski?

25 A. Yes.

1 Q. How long have you known him?

2 A. I've known Mr. Kaczynski since May of -- I
3 first met him in May of 1994.

4 Q. And what were the circumstances of that
5 meeting?

6 A. He and another attorney from Jones, Day by
the name of Paul Koethe --

THE WITNESS: Do you want me
to spell that for you?

THE COURT REPORTER: Yes,
please.

THE WITNESS: K-o-e-t-h-e.

13 A. Flew down to Houston and talked with me
14 about the possibility of engaging in
historical research relevant to tobacco
16 issues.

17 Q. (BY MR. LEYH) When they came to Houston
18 to meet you, did they talk to you about
19 particular cases in litigation?

20 A. I don't recall particular cases, but I do
21 know that I recall that they mentioned
22 that there were cases.

23 Q. Do you recall if they mentioned any
24 particular cases by name?

25 A. I don't recall that they mentioned any

Produced by RJRTC
in
HUMPHREY

- 1 particular cases by name.
- 2 Q. Did they review past or pending litigation
- 3 in which the tobacco companies were
- 4 involved?
- 5 A. As I remember, we talked very generally
- 6 along those lines.
- 7 Q. Did they indicate what the issues were
- 8 that were sometimes in dispute in
- 9 litigation?
- 10 A. Yes.
- 11 Q. And what did they say about those issues?
- 12 What did they -- how did they describe
- 13 them?
- 14 A. Well, what I remember from that
- 15 conversation, it's been a while back, we
- 16 talked about general issues having to do
- 17 with public awareness, what the public
- 18 would have been aware of at particular
- 19 points in time, that sort of thing.
- 20 Q. Did they tell you that public awareness
- 21 was an important legal question?
- 22 A. Yes.
- 23 Q. Did they tell you why they believed it
- 24 was?
- 25 A. Well, I had some, I mean, I had some

52005 1867

1 background knowledge of this. It wasn't
2 that this was fresh information.

3 Q. Where did you get your background
4 knowledge?

5 A. Well, from a whole variety of sources.
6 One can certainly read about cases in
7 newspapers, and I've been interested in
8 product liability litigation as it relates
9 to questions having to do with drinking
10 and alcoholism. Drinking in America has
11 been cited in cases, so I've followed some
12 of that. And there was -- I guess that
13 would be the best example I could give
14 you. I mean, product liability litigation
15 was not a new subject to me.

16 Q. Will you tell me, professor, what your
17 understanding was in May of '94 at the
18 time of your meeting with Mr. Kaczynski
19 and the other gentleman, what your
20 understanding was of the way in which
21 public awareness was an important legal
22 issue in litigation?

23 A. Well, I'm not quite sure how to answer
24 that question. Could you restate the
25 question, please?

Produced by RJRTC
in
HUMPHREY

- 1 Q. You indicated that you were generally
2 familiar with --
- 3 A. Yes.
- 4 Q. -- how this product liability litigation
5 works and had some background. I'm trying
6 to understand how you thought about it,
7 public awareness, in the context of
8 tobacco litigation?
- 9 A. Okay. Well, it would be referring to
10 times before, historically speaking,
11 before you actually had warning labels on
12 various kinds of products.
- 13 Q. And what's your understanding of how those
14 references were important legally,
15 references to warnings before the --
- 16 A. References to --
- 17 Q. Public awareness before the warnings were
18 printed?
- 19 A. Public awareness before the warnings,
20 well, my understanding would be that if
21 the public wasn't aware that would have
22 one effect; if the public was aware, that
23 would have a different effect.
- 24 Q. If the public was aware, the legal effect
25 would be what in your understanding?

52005 1869

produced by RJC TC

1 A. Well, it would depend on the
2 circumstances, but if the public was aware
3 and the public fully understood that would
4 have a distinct effect on the outcome of
5 the cases.

6 Q. What would that distinct effect be?

7 MR. KACZYNSKI: Objection.

8 A. Well, I can't --

9 Q. What is your understanding of what that
10 distinct effect would likely be?

11 A. The distinct effect would likely be that
12 it would be hard to prove that the
13 individual did not know that using a
14 particular product may be hazardous in
15 some way.

16 Q. And you knew that -- you believe that if
17 an individual knew a product was hazardous
18 and was suing for injuries related to the
19 use of the product, that individual was
20 more likely to lose; is that right?

21 A. I knew that probably wouldn't help that
22 individual's case.

23 Q. Now, what's the nature of your interest,
24 other than your book is mentioned from
25 time to time, in the product liability

52005 1870

produced by R.J.R.T.C.
in
CONFERENCE

- 1 litigation involving alcohol?
- 2 A. Well, actually I was contacted about
- 3 serving as an expert witness in a case
- 4 involving a person who drank herself to
- 5 death, and that raised all sorts of
- 6 liability questions. That was back, and
- 7 I'm going to guess at the year, it could
- 8 have been anywhere between '89 and '91.
- 9 And I met with attorneys dealing with that
- 10 particular case in Austin, Texas. We
- 11 talked about the issues, and in the end,
- 12 that was the sum total of that particular
- 13 situation.
- 14 Q. Is that a Texas case?
- 15 A. Yes.
- 16 Q. Who were the attorneys?
- 17 A. Baker & Botts in Austin.
- 18 Q. They represent the defendant; do you know?
- 19 A. Yes.
- 20 Q. Did you provide them with any written
- 21 materials?
- 22 A. No.
- 23 Q. Did you just share your ideas with them on
- 24 one occasion?
- 25 A. I met with them one time for about four

52005 1871

1 hours.

2 Q. Do you know how that litigation ended?

3 A. I honestly don't.

4 Q. You said that you had met or talked to
5 Mr. Kaczynski a couple of times prior to
6 your August 11 meeting, and you told me
7 about the May '94 visit.

8 A. Yes.

9 Q. When was the next occasion you had to
10 speak with Mr. Kaczynski?

11 A. Well, I can't really be sure, but I know
12 that it would have been sometime during
13 the summer because I believe it was
14 Mr. Kaczynski who called me about possibly
15 doing research in regard to a case that
16 was based in Indiana.

17 Q. Did you ever do that research?

18 A. Yes.

19 Q. Okay.

20 A. Well, I started to. Let me put that
21 qualifier in there.

22 Q. Why did you stop?

23 A. Because the attorneys asked me to stop.

24 Q. Do you know why they asked you to stop?

25 A. No.

- 1 Q. Was it research about public awareness of
2 the risk of cigarette smoking?
3 A. Yes.
4 Q. Was it generally the same kind of research
5 you've done for the Burton case?
6 A. Yes.
7 Q. Did you tell Mr. Kaczynski back in May
8 of '94 when you met him that you believe
9 that there were high levels of public
10 awareness on the risk of cigarette
11 smoking?
12 A. No.
13 Q. At any point in time?
14 A. No. Did I tell him that in May of 1994?
15 Q. Yes.
16 A. No.
17 Q. Did you have that opinion in May of 1994?
18 A. I didn't have an opinion in May of 1994.
19 Q. You had never looked at that question
20 before?
21 A. Not that particular question.
22 Q. Have you ever published anything on
23 tobacco?
24 A. No.
25 Q. Have you ever presented a paper at a

1 professional meeting on tobacco?

2 A. No.

3 Q. You have a work in progress, however, on
4 smoking; is that right?

5 A. That is correct.

6 Q. What is the nature of that work?

7 A. The nature of that work is to consider --
8 well, the working title of the book, which
9 is far from being a book at this
10 particular point, is Prohibitionism on the
11 Nature of Coercive Reform in America, and
12 I'm co-authoring that with Mark Lender.

13 We're going to carry forward on
14 some of the themes that we set up in
15 Drinking in America with what is a very
16 parallel movement, as I learned in doing
17 the Drinking in America research, having
18 to do with smoking in America. So we're
19 going to put those two subjects together
20 and see what kind of patterns we come up
21 with.

22 Q. What do you mean by "coercive reform" in
23 the context --

24 A. Prohibitionism.

25 Q. You mean laws prohibiting the use of

1 cigarettes?

2 A. Laws prohibiting the use of any product.

3 Q. Any?

4 A. Well, cigarettes. The book will look at
5 tobacco products, of which cigarettes I
6 guess today is the most common form, and
7 with respect to alcohol.

8 Q. Where in the American life do you see the
9 impetus for the laws prohibiting the use
10 of cigarettes?

11 A. You don't have to have an amendment to the
12 Constitution to have prohibition.

13 Q. I just asked the question: Where in
14 American life do you see the impetus for
15 laws prohibiting the use of cigarettes. I
16 didn't say it had to be a Constitutional
17 amendment.

18 A. Well, if you want a specific example from
19 today?

20 Q. I would.

21 A. I would suppose that some might say that
22 the Food and Drug Administration may --

23 Q. Kessler is a prohibitionist?

24 A. Yes, in his way.

25 Q. Okay. When you say "some might say,"

1 that, in fact, is your opinion; is that
2 right?

3 A. I'm not sure whether I've made up my mind
4 on that. I would best leave it at that.

5 Q. As of today, is it your opinion?

6 A. As of today, is it my opinion?

7 Q. Yes.

8 A. Not as of today.

9 Q. Can you think of any other, other than the
10 FDA sources of prohibition as you put it
11 with respect to cigarettes?

12 A. Sources?

13 Q. Yes, what's giving rise to the prohibition
14 that you're describing?

15 A. I would suppose it wouldn't be all that
16 dissimilar from the kind of anti-cigarette
17 laws that were passed by 15 states between
18 the 1890s and the 1920s, one of which was
19 Kansas. And that is, that there is a
20 health risk concern, and that, as would be
21 argued at that particular time and as is,
22 I believe, in some instances argued today,
23 the government being aware of that risk
24 whether it be at the state level or the
25 federal level or perhaps even at the local

1 level, should abolish the use of those
2 products.

3 Q. Is it your opinion, professor, that the
4 Surgeon General's office at any time since
5 1957 has been prohibitionist with respect
6 to cigarette products?

7 A. Well, when you -- let me preface this by
8 saying, prohibitionist in the sense that
9 they would like to see the product off the
10 market?

11 Q. Prohibitionist in --

12 A. I don't mean in the Constitutional sense
13 when we're talking about prohibitionism.

14 Q. You mean a kind of de facto prohibition?

15 A. Yes, that's what I meant all along.

16 Q. So it's different than the alcohol
17 prohibitionist movement at least in that
18 sense?

19 A. Well, the alcohol prohibitionist movement
20 proved that prohibition doesn't work.

21 Q. But with respect to the Constitutional
22 dimension --

23 A. That's right. When I say prohibitionism,
24 I don't mean the prohibition amendment,
25 the 18th Amendment to the Constitution.

1 Q. You don't mean --

2 A. I mean, finding ways for all practical
3 purposes to eliminate the particular
4 product from the marketplace. Well, it's
5 difficult for me to say, but beyond David
6 Kessler, the FDA, oh, I think there are
7 some strong anti-tobacco advocates in
8 Congress; Henry Waxman's name will come to
9 mind.

10 Q. He's a prohibitionist in this de facto
11 sense?

12 A. I'm sure if Waxman had his way, he would
13 find some means short of a Constitutional
14 amendment to take the product off the
15 market, or legislate it out of existence
16 or regulate it out of existence, which
17 there are ways that this can be done.

18 Q. Can you think of any other leading
19 prohibitionist of tobacco?

20 A. Probably we would put Surgeon General
21 C. Everett Koop, those kinds of people.

22 Q. Is prohibitionism in this de facto sense
23 necessarily bad?

24 MR. KACZYNSKI: Objection.

25 A. That's not something that we're going to

produced by RJRT
in

1 discuss in our book one way or the other.
2 Q. (BY MR. LEYH) Okay. Your book is
3 designed to offer an objective description
4 of what you described as prohibition?
5 A. Hopefully of the phenomenon in American
6 history.

7 Q. And is that the same basic goal you had in
8 Drinking in America?

9 A. Yes.

10 Q. That is, objective description; right?

11 A. Yes.

12 Q. Not making value judgments about the thing
13 you're describing?

14 A. I tried very hard not to make value
15 judgments.

16 Q. And you're trying hard to do the same with
17 tobacco prohibitionism?

18 A. Absolutely.

19 Q. Do you have an opinion, however,
20 irrespective of what your goal is in the
21 book as to whether or not tobacco
22 prohibition would be a good or bad thing?

23 A. I think that in a free society,
24 individuals should be given a choice as to
25 what risks they want to assume with

produced by RRTC
in

1 respect to their lives.

2 Q. Okay. So you would as a personal matter
3 not support lots of regulation of tobacco;
4 fair statement?

5 A. I would -- no, I don't think that's the
6 case.

7 Q. Okay. Why not?

8 A. Well, I think this goes back to what we
9 were talking about before. If a person
10 smokes and someone else objects to it,
11 then the person who is objecting has
12 rights in society, too. So the notion
13 that someone should step outside to have a
14 cigarette doesn't bother me in the least
15 bit.

16 Q. That seems reasonable?

17 A. Absolutely.

18 Q. That's an accommodation to the interest of
19 the general good?

20 A. That's right.

21 Q. There's a sort of republicanism that
22 supports that position; right?

23 A. Well, I guess. I'm not sure I want to
24 elevate it to that level status.

25 Q. All right. What other regulations of

1 tobacco do you think are reasonable as
2 accommodations to the general good?

3 A. I think it's been very good to, this is my
4 personal opinion, eliminate smoking on
5 airplane flights within the continental
6 United States. I think that's in
7 everyone's best interest. I certainly
8 would support legislation designed to
9 limit the access of minors to tobacco
10 products. These would be examples that I
11 could give you.

12 Q. Why would you support that legislation
13 regarding minors?

14 A. Well, I think that individuals, a personal
15 opinion, should try to get a little bit of
16 experience under their belts; and they
17 should be informed of the possible
18 consequences for themselves before they
19 make the decision as to whether they want
20 to smoke.

21 Q. Okay. You believe cigarette smoking is a
22 risk-taking behavior, don't you?

23 MR. KACZYNSKI: Objection.

24 A. Are you asking me for my personal
25 opinion?

1 Q. (BY MR. LEYH) Well, you said there are
2 consequences to minors. I assume they
3 were the health risks.

4 A. There are possible health risks, yes.

5 Q. Those are the consequences you think
6 minors should be fully advised of before
7 they make the choice to smoke?

8 A. That's correct.

9 Q. And you also believe, do you not,
10 professor, that adults should be aware of
11 the risks in order to make an informed
12 choice whether they want to assume the
13 risk?

14 A. In our society, I can't imagine there
15 isn't an adult out there who is not aware
16 that there may be some risk.

17 Q. I'm familiar with your opinion in that
18 regard, and that's an opinion with respect
19 to what Americans know at some point in
20 time. My question is different.

21 A. Okay.

22 Q. It's not about what Americans know in some
23 point in time. It's about as a general
24 matter, do you think before one can be
25 said to exercise a free choice in assuming

1 a risky behavior, they need to know what
2 the risks are associated with the
3 behavior?

4 MR. KACZYNSKI: Objection.

5 Q. (BY MR. LEYH) Is that right?

6 A. I guess that would depend on the
7 circumstances.

8 Q. What circumstances?

9 A. Well, if a person has been repeatedly told
10 in school over and over again smoking may
11 not be good for one's health --

12 Q. You're going back to the empirical word on
13 -- I'm trying to ask a conceptual
14 question.

15 MS. McDOLLE: I don't think
16 the witness has finished his
17 statement.

18 Q. (BY MR. LEYH) Sorry, professor.

19 A. Well, I think if a person has been
20 repeatedly told in an educational
21 situation smoking may not be good for his
22 or her health, then that person has been
23 informed; and at that point, they ought to
24 be in a position to make a logical
25 choice --

1 Q. Okay.

2 A. -- whether they want to assume whatever
3 risks they have been warned about.

4 Q. All right. Now, I want to ask you about
5 whether they are making a free choice
6 about that same risk.

7 A. Uh-huh.

8 Q. One year prior to the point at which
9 they're informed about the risks, at that
10 point antecedent to their understanding of
11 the risks, are they making a free choice
12 in engaging in the risks?

MR. KACZYNSKI: Objection.

13 A. I'm not clear. Are you asking me about my
14 personal opinion on these matters, or
15 what?

16 Q. (BY MR. LEYH) I'm asking about your
17 opinions, yes, sir.

18 A. Okay. So give me the question again,
19 please.

20 Q. I'd be happy to. You responded to the
21 last question by saying I believe that a
22 person who has been repeatedly told about
23 a risk understands what the risk is and
24 makes a free choice in engaging in that
25

1 conduct.

2 My question now is how about one
3 year prior to the time they're informed
4 about the risks. If they engage in the
5 conduct then, is that the same free
6 choice?

7 MR. KACZYNSKI: Objection.

8 A. Well, in our modern society, it would be
9 virtually impossible because they are
10 teaching children at preschool levels
11 about the dangers alleged of various
12 products.

13 Q. (BY MR. LEYH) Well, I don't care about
14 what historical epoch you want to talk
15 about. I just want to talk about a
16 general matter, and it is: Can you be
17 ignorant of the risks and still exercise
18 free choice when you engage in the
19 behavior?

20 MR. KACZYNSKI: Objection.

21 Q. (BY MR. LEYH) Is your choice a free one
22 if you don't know the risks of the
23 conduct?

24 MR. KACZYNSKI: Objection.

25 A. I would have to -- this is strictly a

1 philosophical answer because it doesn't
2 necessarily relate to anything other than
3 the question. It is a free one.

4 Q. (BY MR. LEYH) So it's fair to say one
5 need not know the risks in order to freely
6 choose a conduct, in your opinion?

7 MR. KACZYNSKI: Objection.

8 A. That's not what I said.

9 Q. (BY MR. LEYH) It's not? How is it
10 different?

11 A. I said that the choice is a free one.

12 Q. How is that different from what I said?

13 A. Well, what did you say?

14 MR. KACZYNSKI: Can I make an
15 objection, and then you can go on.
16 If not clear in his report, he's
17 being tendered as an expert on the
18 public awareness in the issues of
19 smoking and health. So far he's
20 been asked opinions on political
21 philosophy, risk decision-making
22 process, and medical questions
23 about what the consensus in the
24 medical community is.

25 You can ask him anything you

Produced by RJRTC

in

HUMPHREY

1 want just so it's understood in the
2 record that's not what he's for and
3 that's not what he's offered as, so
4 with that objection --

5 MR. LEYH: If you think what
6 we've been talking about is not
7 relevant to his credibility as an
8 expert or his opinions in this
9 case, then I suggest that you
10 reassess your expert witness.

11 Q. (BY MR. LEYH) Now, the question is --

12 THE WITNESS: Can we take a
13 ten-minute break?

14 MR. LEYH: Would you mind
15 waiting until closer to noon, since
16 we have to break then anyway?

17 MS. McDOLE: I would welcome
18 a break.

19 THE WITNESS: Take a
20 two-minute break?

21 MR. LEYH: All right. Let's
22 do that.

23 (A brief recess was taken.)

24 Q. (BY MR. LEYH) Professor Martin, do you
25 know why you were asked to end your

52005 1887

1 research for the sake of this report in
2 the 1960s, in the mid-1960s?

3 A. I would have to assume that's because
4 cigarette warning labels began to appear
5 in 1966.

6 Q. Were you told that? I mean, were you told
7 that that's why you should stop your
8 research in the mid-Sixties?

9 A. I don't remember specifically that I was
10 told that specifically, but it was an
11 obvious assumption to make.

12 Q. Let me refer you to the first paragraph of
13 your report where you say, and you're
14 describing the second question you were
15 asked to address?

16 A. Yes.

17 Q. You said that you were asked to consider
18 the subject of public awareness in regard
19 to the alleged addictive or habit-forming
20 quantities of smoking; do you see that?

21 A. Top of Page 2?

22 Q. Well, we have different copies. I'm in
23 the first paragraph.

24 A. Oh, okay.

25 Q. I think you restate the point elsewhere.

1 Do you see it?

2 A. Yes.

3 Q. Now, for your historical purposes, are you
4 using the terms "addictive" and "habit
5 forming" as synonymous?

6 A. Well, it depends on the time and the
7 circumstance for historical purposes.

8 Q. Okay. So at some point in time, they're
9 synonymous, and at other points in time
10 they are not?

11 A. That's correct.

12 Q. At what points in history are those two
13 words synonymous?

14 A. Well, if you want an example, when you use
15 an expression as was commonplace and
16 pervasive in American society in the early
17 twentieth century, such as "addicted to
18 the cigarette habit," I would say those
19 terms are fairly synonymous. And when you
20 well, let me just give you that as an
21 example.

22 MS. McDOLLE: Greg, can we go
23 off the record for a second?

24 (Discussion off the record.)

25 Q. (BY MR. LEYH) Can you tell me if

1 addiction and habit were synonymous as
2 they were used in the context of cigarette
3 smoking before 1950?

4 A. Before 1950, generally, yes.

5 Q. How about before 1960?

6 A. Yes.

7 Q. At what point in time did they begin to
8 mean something different from one another?

9 A. I would say after 1960.

10 Q. Okay. Is there some particular event
11 after 1960 that was important in
12 distinguishing addiction from habit?

13 A. Yes, but that event occurred beyond the
14 period in time that I investigated.

15 Q. What is the event?

16 A. Well, the event that I'm thinking of is
17 the pronouncement that smoking is
18 addictive in the late 1980s. I can't give
19 you the exact date by the Surgeon General.

20 Q. Okay.

21 A. Which is different than what was presented
22 just 20-some years before that time.

23 Q. And 20-some years before that time, you're
24 referring to the '64 report?

25 A. Yes, the '64 report.

1 Q. And it's your understanding the '64 report
2 says cigarette smoking is habit forming
3 but not addictive?

4 A. That distinction is made in the '64
5 report, yes.

6 Q. Do you have an opinion as to -- strike
7 that.

8 Do you know if there were medical
9 organizations like the AMA or the World
10 Health Organization that offered opinions
11 between 1964 and 1988 on whether cigarette
12 smoking was addictive or habit forming?

13 A. Well, the AMA chose not to endorse the '64
14 Surgeon General's report, and I really
15 haven't investigated that question.

16 Q. Do you know what the World Health
17 Organization's views of cigarette smoking
18 as an addiction or habit or a dependence
19 were between '64 and '88?

20 A. Well, I have to state that I recall
21 reading some articles in which the World
22 Health Organization was mentioned, and I
23 would only be guessing at a date. That
24 really doesn't have anything to do with
25 the material that I was looking at.

1 Q. Do you recall what the World Health
2 Organization said about cigarette smoking
3 as an addiction?

4 A. Yes, the World Health Organization at some
5 point declared cigarette smoking
6 addictive, but I can't give you a specific
7 date. I won't give you a specific date
8 because I don't recall.

9 Q. Do you know if it was before 1988 when the
10 Surgeon General --

11 A. Yes, it was before 1988 as I recall.

12 Q. So the Surgeon General's report wasn't the
13 first authoritative suggestion that
14 cigarette smoking was addictive; is that
15 right?

MR. KACZYNSKI: Objection.

16 A. I was not asked to look and investigate
17 the World Health Organization.

18 Q. (BY MR. LEYH) So you don't know the
19 answer to that question?

20 A. I don't know what you mean by the term
21 "authoritative."

22 Q. Well, is the World Health Organization a
23 respected medical body?

24
25 A. Depends on who you talk to.

1 Q. I'm talking to you, professor.

2 A. Okay.

3 Q. I'm not talking to anybody else. Is it --
4 in your opinion is the World Health
5 Organization a respected medical body?

6 A. Yes.

7 Q. That's what I mean by authoritative.

8 A. Well, I think we could argue the semantics
9 of respect versus authoritative for the
10 next several days.

11 Q. Why bother if I just told you for the
12 purpose of my question?

13 A. For the purpose of my answer, I won't
14 equate the two.

15 Q. All right. What's authoritative then, if
16 you want to argue semantics?

17 A. Beyond dispute.

18 Q. Beyond dispute?

19 A. Beyond dispute.

20 Q. Give me an example.

21 A. That automobile engines are a source of
22 air pollution.

23 Q. Surgeon General's report in 1988 is not
24 authoritative in your judgment; is that
25 right?

1 A. I told you what the Surgeon General said.

2 Q. I'm just asking you a new question. Now,
3 will you tell me the answer to it?

4 A. Well, I'm not sure; and the best thing I
5 can say to you about this, when someone
6 says addiction anymore, that's a term that
7 from my point of view has become so vague
8 as to almost be meaningless in modern
9 America.

10 Q. Have you read the '88 Surgeon General's
11 report?

12 A. No.

13 Q. Do you know what they said about
14 addiction?

15 A. No, I didn't read the report.

16 Q. Do you know whether their definition was
17 so vague as to be meaningless?

18 A. I don't know anything about what their
19 definition was in the 1988 report because
20 that was not what I was asked to
21 investigate.

22 Q. I'm not asking you about what you were
23 asked to investigate. I'm asking you
24 about the '88 Surgeon General's report.
25 Okay? The question relating to that

1 report is, is it your opinion that the '88
2 Surgeon General's report is authoritative
3 given your definition of authoritative?

4 MR. KACZYNSKI: Objection.

5 A. I don't know.

6 Q. (BY MR. LEVH) Now, at the bottom of
7 Page 1, as you're offering your general
8 answers to the two questions, you say
9 under "2.) A vast amount of information
10 has been disseminated to the general
11 public and has resulted in very high
12 levels of public awareness and
13 understanding with respect to potential
14 difficulties in quitting smoking."

15 When you looked at this second
16 question, which is what's the level of
17 public awareness about addictive or
18 habit-forming qualities of smoking, did
19 you understand quitting smoking to be a
20 measure of public awareness about
21 addictive or habit-forming qualities?

22 A. What I meant by that was that the people
23 understood it might be difficult to quit
24 smoking.

25 Q. And my question is, is it your

1 understanding that that difficulty is a
2 measure of their understanding of the
3 addictive or habit-forming qualities of
4 smoking?

5 A. Yes.

6 Q. Okay. Are they basically the same thing,
7 in your opinion, for the sake of your
8 historical analysis here?

9 A. Well, if something is, quote-unquote,
10 addictive or habit forming, that means
11 it's difficult to quit.

12 Q. In your opinion?

13 A. In my opinion, it was certainly stated
14 over and over in everything I read, so I
15 guess my opinion would reflect the
16 materials that I read.

17 Q. Are you familiar with the state-of-the-art
18 science on smoking cessation?

19 A. I'm not a scientist and I'm not a medical
20 doctor.

21 Q. So there may well be many things that go
22 into whether or not it's difficult to quit
23 smoking that you're unaware of, I assume;
24 is that correct?

25 MR. KACZYNSKI: Objection.

produced by RJRTC
in
HUMPHREY

- 1 A. I don't know because I'm not a medical
2 doctor or scientist.
- 3 Q. (BY MR. LEYH) But it is fair to say for
4 the sake of your historical report that
5 it's your opinion if something is harder
6 to quit, it's more addictive?
- 7 A. If something is harder to quit, it is more
8 addictive?
- 9 Q. Harder to stop doing, like smoking, then
10 it must be more addictive. That's your
11 opinion, isn't it?
- 12 A. More addictive if it's harder to quit
13 smoking?
- 14 Q. Yes, exactly.
- 15 A. I don't know what that means.
- 16 Q. Well, it means that if it's more difficult
17 for an individual to stop smoking, it's
18 your opinion that smoking must be more
19 addictive than less addictive?
- 20 A. Now.
- 21 Q. It's not your opinion?
- 22 A. I don't understand what you're talking
23 about.
- 24 Q. Well, I'm trying to figure out what you
25 mean by potential difficulties --

Produced by RJRTC

1 A. What I mean --

2 Q. Let me finish the question. What you mean
3 by potential difficulties in quitting
4 smoking as it relates to measuring public
5 awareness of the addictive qualities of
6 smoking.

7 A. Virtually every document I read from
8 primary school textbooks through newspaper
9 articles that covered everything from
10 methods to quit to, perhaps, various
11 groups one might join to quit, all made
12 the point that it was probably going to be
13 difficult to quit once you started smoking
14 and had formed the habit.

15 If smoking is harder for some people to
16 quit, did these sources suggest that it
17 was more addictive?

18 A. Do you mean for some people it's more
19 difficult to quit than other people; is
20 that what you're asking?

21 Q. I'm asking if it's the case in these
22 sources you examined that if certain
23 individuals have a more difficult time
24 quitting smoking, does it follow that they
25 are more addicted to smoking?

MR. KACZYNSKI: Objection.

A. I can't really answer that. That's calling for medical information.

Q. (BY MR. LEYH) I'm asking if the sources just reported that. You just told me what they reported on something else. I'm asking if they reported on that.

A. The sources report different ways of quitting, and the sources make it clear that some people may have a more difficult time quitting than other people. That's what I can recall at this point.

Q. Okay. Let me ask you about in the middle of the page you've got "1.)" You say, "A wide variety of information has been disseminated to the general public and has resulted in very high levels of public awareness and understanding about the possibility of serious diseases... being associated with smoking," and I left out a phrase there.

Now, is this information the sort of information we were talking about this morning under various headings like health and political and so on?

- 1 A. Are you referring to serious diseases?
- 2 Q. I'm referring to what you're talking about
- 3 here. That's the question.
- 4 A. If we take the phrase "serious diseases,"
- 5 the serious diseases that are being
- 6 referred to over and over again in
- 7 newspapers, textbooks, pamphlets, tracts,
- 8 whatever it might be, television programs,
- 9 on and on and on, the serious diseases
- 10 that are named are heart disease,
- 11 circulatory diseases, or diseases of the
- 12 circulatory system, and cancer.
- 13 Q. Okay. Now, does your assertion here that
- 14 we've just read --
- 15 (Brief interruption.)
- 16 MR. LEYH: Let's go off the
- 17 record.
- 18 (A brief recess was taken.)
- 19 (Ms. McDole was not present
- 20 when the proceedings resumed.)
- 21 Q. (BY MR. LEYH) Professor Martin, were you
- 22 asked to give an opinion on what David
- 23 Burton understood about the health risks
- 24 associated with cigarette smoking?
- 25 A. I was asked to give an opinion on what

1 Americans were aware of with respect to
2 health risks.

3 Q. Would you answer my question?

4 A. I wasn't asked specifically to comment on
5 David Burton.

6 Q. Your opinion as represented in your expert
7 report, Exhibit 1, does not specifically
8 address what David Burton knew about the
9 health risk of smoking, does it?

10 A. No, it does not.

11 Q. Professor, we've been talking in general
12 terms today about various sources of
13 information about health and smoking and
14 the twentieth century in America. Is it
15 fair to say that up until, say, 1960, that
16 there were disputes about whether or not
17 cigarette smoking was a health risk?

18 A. Yes, there were some disputes.

19 Q. And is it fair to say that throughout the
20 period 1900 to 1960 there were those who
21 communicated information to the public to
22 suggest that cigarette smoking was not a
23 risk-taking behavior?

24 A. There were very few.

25 Q. Is it fair to say that between 1900 and

1 1960, there were those who communicated to
2 the public the following idea: We don't
3 know whether or not cigarette smoking
4 causes adverse health effects?

5 A. Yes.

6 Q. And were there a significant number of
7 those who said we don't know whether
8 cigarette smoking causes adverse health
9 effects or not?

10 MR. KACZYNSKI: Object to
11 form.

12 A. Well, I'm not sure how to define
13 "significant number," but probably not an
14 overwhelming number, no.
15 (BY MR. LEYH) Who were these persons or
16 organizations that suggested between 1900
17 and 1950 that cigarette smoking -- it's
18 not known whether or not cigarette smoking
19 creates health risks?

20 A. Well, based on the material that I went
21 through, and let me draw from the regional
22 and local newspapers, the Kansas City
23 papers, the Springfield papers, and the
24 Emporia Gazette, that there were two types
25 of comments that would be made.

1 One type of comment would be, we
2 are not sure. We need more research.
3 Those comments would come from either a
4 spokesperson of the tobacco company or in
5 the Fifties from a person by the name of
6 Clarence Cook Little who chaired the
7 Tobacco Industry Research Committee.

8 And then the second category would
9 be scientists and researchers themselves
10 who would say we are not sure of the
11 causal process.

12 Q. Now, you prefaced your answer by saying,
13 "based on the material I went through."

14 Do you know if your answer would be the
15 same based upon all of the material about
16 which you have knowledge?

17 A. Yes, I would say it would be fundamentally
18 the same.

19 Q. Okay. And if I asked about instead of
20 1950, up through 1960, if I asked about up
21 through the present, are there people who
22 say that we don't know whether or not
23 cigarette smoking causes adverse health
24 effects, would your answer be the same or
25 would it be different?

1 A. Well, I wasn't asked to look at materials
2 beyond the mid-1960s.

3 Q. But you have some knowledge of materials
4 beyond then, don't you?

5 A. Well, I've read a few things. I would
6 have to base it on what I read, and I
7 would say fundamentally the same, yes.

8 Q. Okay. So it's your understanding that
9 today the tobacco companies generally say
10 that we're not sure if cigarette smoking
11 causes health diseases, or diseases. We
12 need more research. Is that your
13 understanding?

14 A. Well, I haven't studied that question in
15 particular, so anything like that would be
16 a guess on my part.

17 Q. What is your best judgment with respect to
18 that?

19 A. That, I can't be sure.

20 Q. You don't know one way or the other?

21 A. (Witness nods head.)

22 Q. Is that the same for scientific
23 researchers that you don't know whether or
24 not there are scientific researchers
25 independent of the tobacco companies who

Produced by RJRTC

in

1 today take the position that we just don't
2 know whether or not?

3 A. I really don't.

4 Q. Okay. Now, you mentioned Little and the
5 TIRC in the Fifties?

6 A. Yes.

7 Q. Were they doing anything to communicate
8 their views to the public, TIRC?

9 A. Well, I recall a few news articles that
10 may have commented on research that was
11 supported by the TIRC. And there were
12 also news articles announcing the TIRC in
13 early 1954 that appeared in various
14 papers, and there was a statement, I
15 think, that was in 1954, too, that was put
16 out by the TIRC.

17 Q. The Frank statement, is that what you're
18 talking about?

19 A. Yes.

20 Q. And what is your understanding of what the
21 Frank statement was?

22 A. Well, the Frank statement, and I don't
23 have the document in front of me so this
24 would be purely generalized.

25 Q. Is it in your files?

1 A. I don't believe so.

2 Q. You didn't look at it for the purpose of
3 this expert opinion?

4 A. Well, if it appeared in The New York Times
5 in 1954, it would be there.

6 Q. I'm sorry. I interrupted you. Go ahead
7 and tell me.

8 A. My understanding of the Frank statement
9 was that it did two things. First of all,
10 it reviewed a lot of the research that had
11 been published and made aware the public
12 over a previous period of time, and then
13 it said we need further research and we
14 need more information before we conclude
15 one way or the other.

16 Q. Do you recall whether it said there is a
17 controversy, and we need to determine
18 whether there's any merit to the claim
19 that smoking causes disease?

20 A. It said that there had been a number of
21 studies, and that in and of itself would
22 suggest that there may be some differences
23 of opinion.

24 Q. That's basically the position that you
25 understand the tobacco companies have had

produced by RJRTC
in
HUMPHREY

1 throughout recent history up until today?
2 A. Through the mid-1960s, I've read comments
3 of which there are very few, by the way,
4 in terms of the total numbers of articles
5 and newspaper stories that are out there
6 in which individuals have said we don't
7 know for sure and we need further
8 research.

9 Q. You're talking about, now, tobacco company
10 statements?

11 A. I'm talking about someone who a reporter
12 may have called up who may have been
13 employed by a tobacco company.

14 Q. Are you aware of any public relations
15 firms that work for tobacco companies and
16 have contributed to public information
17 about the health risks associated with
18 cigarette smoking?

19 A. I don't really know much about that, no.

20 Q. Okay. Do you know whether or not the
21 Frank statement was understood by the
22 public?

MR. KACZYNSKI: Objection.

24 A. I don't have any way of knowing what the
25 public derived from the Frank statement.

1 Q. (BY MR. LEYH) Or from any other things in
2 the public domain?

3 MR. KACZYNSKI: Objection;
4 vague.

5 Q. (BY MR. LEYH) Well, let's be clear. You
6 don't have any way of understanding what
7 the public derived from the Frank
8 statement; right?

9 A. That's correct.

10 Q. Is your ability to ascertain what the
11 public understands any different with
12 regard to the sources of information you
13 discuss in your report?

14 A. Well, yes, because in 1954, there was a
15 Gallup Poll that is discussed in the
16 report; and I don't remember the exact
17 wording, but it says something to the
18 effect if you've seen or heard reports
19 lately that cancer may be -- I'm sorry --
20 that smoking may be a cause of cancer, and
21 90 percent of the American people said
22 yes. So that would be an indication to me
23 that a very substantial proportion of the
24 population was aware of the issue with
25 respect to cancer.

1 Q. Well, were 90 percent of the American
2 people polled in that poll?

3 A. I don't know of any polling that ever
4 polled 90 percent of anyone.

5 Q. I don't know either. I take it that you
6 infer that the 90-percent response rate
7 means that 90 percent of the American
8 public would have an affirmative answer to
9 that question?

10 (Ms. McDole entered the
11 deposition room.)

12 A. No, what it says is that the Gallup
13 organization, which claims to have a high
14 degree of accuracy in its samples, says
15 that 90 percent of the American people
16 answered that question in the affirmative.

17 Q. (BY MR. LEYH) That's what the Gallup Poll
18 says, 90 percent --

19 A. That's --

20 Q. Let me finish. The Gallup Poll says
21 90 percent of the American people answered
22 that question in the affirmative; correct?

23 A. It says 90 percent of the respondents,
24 which is meant to be a representative
25 sample of the American people, answered

1 that question in the affirmative.

2 Q. Now, we are talking about 90 percent of
3 the respondents, and you understand that
4 to mean that it's a reflection of
5 90 percent of the American people; is that
6 correct?

7 A. That's correct.

8 Q. You understand that because you rely on
9 the Gallup organization as a reputable
10 polling organization; is that right?

11 A. Yes.

12 Q. Now, was that information about lung
13 cancer in that '54 Gallup Poll question
14 the only source of information the public
15 had in 1954 about the risks regarding lung
16 cancer from cigarette smoking?

17 A. Excuse me, the only source of
18 information?

19 Q. Well, that's a bad question.

20 Were there contrary opinions
21 expressed to the public in 1954 about
22 whether or not cigarette smoking causes
23 lung cancer?

24 A. Contrary opinions?

25 Q. Yes, contrary to the belief that there's

1 an association between cigarette smoking
2 and lung cancer?

3 A. I think that's rather difficult for me to
4 answer. I'm going through the, as best I
5 can, the various materials that I've read
6 in 1954, and it would depend, I guess, on
7 how one interpreted the --

8 Q. Let me withdraw. I'll withdraw the
9 question.

10 You said earlier you weren't
11 familiar with any tobacco-supported public
12 relations work; correct?

13 A. I've not looked into that issue.

14 Q. So let me just talk about tobacco
15 companies' statements, statements made by
16 employees or representatives of any of the
17 tobacco companies. Are you aware of any
18 such statements between 1950 and 1996
19 regarding the health risks of smoking?

20 A. The period that I looked at between 1950
21 and 1965, 1966, depending on the cutoff
22 date, there were statements made; and I
23 would estimate they would represent in
24 terms of coverage 2 to 3 percent of the
25 total volume of articles that were out

1 there.

2 Q. Okay. And do you know if the public was
3 aware of those tobacco company statements?

4 A. Well, if they read those articles.

5 Q. Were they any less aware of them than they
6 are allegedly aware of the things that you
7 attribute to the public awareness in the
8 Fifties and Sixties?

9 A. Well, this is a rough number, again, when
10 one in forty to fifty articles may have
11 one comment by one tobacco representative,
12 you're not talking a very significant
13 proportion of the total volume of
14 materials that would have been made
15 available to the public through
16 newspapers.

17 Q. Okay. So you think -- as it relates to
18 tobacco company statements, you think it's
19 pretty insignificant in terms of the
20 overall public awareness?

21 A. Absolutely.

22 Q. All right. You think that largely, I take
23 it, because of the volume of statements
24 about health and smoking --

25 A. There is a second factor, and that is that

1 many of these statements would not appear
2 in the upper half or upper third or upper
3 fourth of these articles. Many of them
4 would be an, oh, by the way, we have yet
5 further information from Hammond or Horn
or whatever scientific group it was, and
there would be a couple of paragraphs from
the end what some person would say from a
tobacco company. And they invariably
would say, well, we need further research
on this subject.

12 Q. What's the Tobacco Institute?

13 A. Tobacco Institute?

14 Q. Yes.

15 A. The Tobacco Institute was and is, if it's
16 still in existence and I honestly don't
17 know, a trade organization based in
18 Washington, D.C., founded, I'm going to
19 guess at the date, around 1958, maybe it
20 was 1959, late Fifties.

21 Q. What was its purpose?

22 A. Well, I suppose it's like any trade
23 organization based in Washington, D.C. It
24 was interested in promoting its product.

25 Q. Do you know whether or not it contributed

produced by RJRTC
in
HUNTER

- 1 to, it being the Tobacco Institute,
2 contributed to the public awareness about
3 the health risks of cigarette smoking?
4 A. Based on the materials I've looked at, I
5 would say it played an inconsequential
6 role.
7 Q. Okay. Do you know what its budget was at
8 any point in time?
9 A. No, I don't.
10 Q. Do you know if it had a message it sought
11 to communicate to the public?
12 A. No, I really don't.
13 Q. Have you looked at any Tobacco Institute
14 documents to your knowledge?
15 A. No, I haven't.
16 Q. Have you looked at any internal tobacco
17 company documents to your knowledge?
18 A. No.
19 Q. Do you have an opinion regarding whether
20 or not tobacco cigarette advertisements
21 communicated to the public any information
22 about the health risks of cigarette
23 smoking?
24 A. Not really.
25 Q. No opinion on that?

1 A. Well --

2 Q. Did you look at any advertisements in the
3 course of working on this case?

4 A. Well, if I did, there were not many of
5 them.

6 Q. Okay. All right. What I'd like to do is
7 ask you, if you can, to rank in terms of
8 their order of importance as sources of
9 information to the public about the health
10 risks of smoking the eight sources that
11 you identified in your report. You may
12 want to take a minute to flip through them
13 and refresh your memory as to what they
14 are.

15 A. Well, I think that I have to state at the
16 outset different sources will have
17 different levels of importance at
18 different points in time.

19 Q. That's a good distinction. Would it be
20 helpful if we spoke about sections of time
21 and did it that way? Which section should
22 we talk about?

23 A. I can try. I would say if we would talk
24 about the nineteenth century and into the
25 early twentieth -- let's just say

1 nineteenth century, books, pamphlets, and
2 articles would be in the top. I think
3 what I'm going to have to do is say in the
4 top two or three. Anti-smoking
5 organizations, and then certain kinds of
6 government actions, such as state
7 prohibition laws, and various -- well,
8 that takes us into the twentieth century,
9 so we'll leave that out. Just let me
10 strike what I was going to say there. And
11 also, I would say a portion of popular
12 culture sources, and I'm not going to try
13 to rank these.

14 I think I've given you four that
15 would have been important, but certainly
16 all sorts of expressions are coming into
17 play; the most obvious being "coffin
18 nail," which works its way into the
19 American vocabulary by the 1890s, if not
20 before.

21 Q. So we're talking nineteenth century.
22 You've identified books and pamphlets, the
23 anti-smoking groups, certain state
24 prohibition laws, and popular culture; is
25 that right?

- 1 A. Just let me review. Yes, that's right.
- 2 Q. Would you care to add any others or should
- 3 we go to another period of time?
- 4 A. Well, I can do this backwards. Obviously
- 5 television and radio didn't exist. The
- 6 court cases that I reference are twentieth
- 7 century, so they wouldn't fit. The
- 8 newspapers and popular magazines I've
- 9 looked at are primarily focused on the
- 10 twentieth century.
- 11 Q. All right.
- 12 A. I think that pretty much covers it
- 13 according to the material that I've looked
- 14 at.
- 15 Q. What's the next historical period you
- 16 would like to bite off here?
- 17 A. I think if we would go to the period 1900
- 18 to, let's say, into the 19 -- let's just
- 19 say roughly up to the Second World War,
- 20 roughly 1900 to 1940.
- 21 Q. Okay.
- 22 A. Certainly book, pamphlets, and articles
- 23 will remain important, especially
- 24 pamphlets, because some of this period is
- 25 pre-radio and television; so pamphlets

1 like Henry Ford's The Little White Slaver
2 would receive widespread circulation.

3 Some magazines are coming into play there,
4 and I particularly point to the rise of
5 popular magazines like Reader's

6 Digest, Time, Newsweek are beginning to
7 have a play. Anti-smoking associations
8 are in decline really after about 1920.

9 Certainly what is very, very
10 important and may be the most important
11 factor in this group would be the
12 development of school materials and
13 textbooks dealing with health issues,
14 where states are adopting uniform
15 standards with respect to what subjects
16 should be taught in schools and what kinds
17 of materials teachers should use in
18 classroom instruction; and that is a very,
19 very significant development for the
20 twentieth century, and that process is
21 going on in many states including Kansas
22 by the 1890s. So I would say probably
23 that is going to emerge as the most
24 significant source of public information
25 in the period that we are discussing.

1 And then finally, radio is
2 basically lost to us. Popular culture
3 sources, increasing public awareness of
4 the possible health hazards of cigarette
5 by a broadening of a popular vocabulary
6 about the cigarette in reference to
7 "coffin sticks," "gaspsers," "little white
8 slaver," whatever else it might be.

9 Q. That's popular culture?

10 A. Well, I'm just putting in that general
11 kind of a category. We can say popular
12 vocabulary; we can say popular
13 expressions.

14 Q. Are those the significant sources of
15 public information about cigarette smoking
16 and health between 1900 and 1940?

17 A. Yes.

18 Q. Okay. What period would you care to
19 address next?

20 A. Well, we pass over the World War II. We
21 go into the period, take the next 20
22 years, up to the mid-1960s. We would find
23 at the base a host of studies,
24 medical-related epidemiological studies,
25 other kinds of experimental laboratory

1 studies such as the experiments with
2 respect to where they would paint tar on
3 mice and see whether tumors would
4 develop. And what we find is that
5 information very, very rapidly is
6 disseminated through the popular press in
7 newspapers, magazines, and also an
8 increasing world of television in the
9 general circulation of information.

10 In the meantime, public education
11 continues. Information about possible
12 problems associated with smoking will
13 continue to be emphasized in the health
14 courses at the primary and secondary
15 levels, so this will be -- additionally,
16 this will be a critical factor.

17 Q. You're talking about, what, '45 to '65
18 here?

19 A. Yes. And you also will have the Federal
20 government taking a more active role,
21 especially in the 1950s. In the year
22 1957, Surgeon General Leroy Burney will
23 make a statement to the effect that
24 smoking may be a causal factor in the
25 development of lung cancer, and he will

1 also make the point that he is using all
2 the available resources to get that
3 information to the public.

4 Q. As to that statement by the Surgeon
5 General in 1957, was that disputed in the
6 public domain by anybody to your
7 knowledge?

8 A. It may well have been, but I don't
9 remember a specific article in terms of
10 the ones I looked at.

11 Q. Do you recall, jumping ahead to the '64
12 Surgeon General report, whether or not
13 there was a dispute about its allegations
14 regarding the risks of cigarette smoking
15 in the public domain?

16 A. In the public domain?

17 Q. Yes.

18 A. I believe that a comment was made to the
19 effect that the Surgeon General's report,
20 and I can't name the individual, the
21 statement would have been made to the
22 effect that the Surgeon General's report
23 is a little more than a summary of what
24 has previously been known. It breaks no
25 new ground, and therefore, we need to keep

1 doing research.

2 Now, who that statement was made by
3 and who that person may have represented,
4 I would presume it may have been some
5 representative of one of the tobacco
6 companies. I remember reading a statement
7 to that effect.

8 Q. Just to be clear, do you take that
9 statement to reflect a dispute in the
10 public domain about whether or not
11 cigarette smoking causes disease in 1964
12 whenever the statement was made?

13 A. Well, "dispute" is the term you've been
14 using.

15 Q. Well, I'm just wondering if you -- do you
16 want to use another term?

17 A. I presume the person was asked to make a
18 comment of that person's opinion about the
19 Surgeon General's report.

20 Q. Professor, you're the one who is telling
21 us about what the public is aware of. My
22 question is, did they have information
23 about a dispute with respect to the
24 statements made in the '64 Surgeon
25 General's report?

1 A. Did they --

2 Q. The public.

3 A. The public?

4 Q. Yes.

5 A. Did they have information?

6 Q. About a dispute concerning the allegations
7 that cigarette smoking causes disease?

8 A. If they did, they were going to have to
9 look very deep in the newspapers.

10 Q. You don't think there was easily
11 accessible information to challenge the
12 report; correct?

13 A. I would say essentially that is correct.

14 Q. Okay. How about in 1954? Was there
15 easily accessible information to the
16 public challenging allegations that
17 cigarette smoking caused disease?

18 A. I would say that it was about the same to
19 go back to the figures I've given you
20 before.

21 Q. About the same as '64?

22 A. The numbers?

23 Q. In terms of the difficulty of finding
24 information.

25 A. Yes, the numbers would be very similar.

produced by RJRTC
in
EMPORIA

- 1 Q. How far back could we go and say that;
2 '44, '34? I mean, where would you draw
3 the line?
- 4 A. Well, the newspapers that I looked at for
5 this in terms of the regional and local
6 newspapers -- and that is the sample that
7 I am drawing on, the Kansas City,
8 Springfield, Missouri, and Emporia
9 Gazette -- begin with 1954 and end in the
10 mid-1960s.
- 11 Q. Do you have any information about whether
12 or not prior to 1954 anywhere in the
13 United States the public had access to
14 information to suggest there was a dispute
15 about whether or not cigarettes caused
16 disease?
- 17 A. Before 1954? Oh, I'm sure there must have
18 been someone somewhere who said something,
19 but I can't recall anything specifically.
- 20 Q. It is fair to say, given the way you
21 phrased that answer, that if somebody said
22 something, it was not likely to have been
23 a significant part of the information
24 available to the public?
- 25 A. That's correct.

1 Q. Okay. You think generally speaking
2 throughout the twentieth century that it's
3 been a fairly one-sided presentation of
4 information and evidence about the health
5 risks of cigarette smoking?

6 A. The overwhelming amount of information
7 that was being made available to the
8 public based on the sources that I have
9 reviewed was that smoking would be a
10 source of health risks and that it could
11 be difficult to quit.

12 Q. And you have reviewed all the sources that
13 in your professional opinion you believe
14 are relevant to answering the questions
15 you were assigned, haven't you?

16 A. Yes.

17 Q. Okay. Now if we go from 1965 to the
18 present, is that a chunk of time we can
19 talk about in terms of ranking these
20 sources?

21 A. Well, I didn't really look beyond the
22 mid-1960s, so that would be very difficult
23 for me to do.

24 Q. Okay. I'm looking at, in case you want to
25 be where I am, Page 2 of the report, "A.)

1 The Laws and Materials Relating to Primary
2 and Secondary Education."

3 A. Yes.

4 Q. Near the bottom of that page, half a dozen
5 lines or so up, you talk about, "These
6 texts, dating back to the early twentieth
7 century, uniformly describe tobacco as
8 habit-forming." You're talking about --
9 then you cited Kansas curriculum bulletin
10 in the next sentence.

11 A. Yes.

12 Q. Is that in your file?

13 A. The Kansas curriculum bulletin?

14 Q. Yes.

15 A. Yes, it is there, a complete copy.

16 Q. What other texts are you aware of that
17 were used in Kansas that contained the
18 health messages that you described here?

19 A. Well, we have quite a good number of texts
20 that are --

21 Q. In the file?

22 A. In the file.

23 Q. Okay.

24 A. I hesitate to give you a number, but it's
25 a complete list of the textbooks that were

1 adopted by the Kansas Board of Education
2 and that teachers in school districts
3 could select from for classroom adoption.

4 Q. What you have in your file is a list, not
5 the texts themselves?

6 A. No, there are texts there, too.

7 Q. Oh, really?

8 A. Yes.

9 Q. Do you know whether or not any of the
10 texts that you have identified as texts
11 used in Kansas were used in the schools
12 that David Burton attended?

13 A. I don't know whether they would have been
14 used in his particular school, but I would
15 say, yes, they would have to be.

16 Q. What school did he go to?

17 A. Well, I believe he went to a school in
18 Emporia, Kansas. So I would guess the
19 Emporia, whatever you call it, the
20 Emporia, Kansas, School District.

21 Q. Whatever you call it, you don't know the
22 name of the particular school he attended,
23 do you?

24 A. No.

25 Q. And you don't know, in fact, whether or

Produced by R.J.R.T.C.

in

HUMPHREY

52005 1928

- 1 not that particular school used any of the
2 particular texts that you've identified as
3 texts used in Kansas, do you?
4 A. They were required to, yes.
5 Q. You're assuming they used them, but do you
6 actually know that? Are you speculating?
7 A. Am I speculating?
8 Q. Yes.
9 A. Well, I can't say that they used them.
10 No, I can't say that. I have no way of
11 knowing that.
12 Q. Okay. And I take it you don't know
13 whether or not David Burton ever read any
14 of these texts, do you?
15 A. Well, he did say that he was aware of the
16 issue of cancer, and presumably, he got
17 that information from somewhere. And one
18 could possibly guess that may have been
19 from a textbook used in his school.
20 MR. LEYH: Move to strike as
21 nonresponsive.
22 Q. (BY MR. LEYH) Listen to the question
23 carefully. Would you do that for me,
24 professor? Do you know whether or not
25 David Burton --

1 A. No, I just said that.

2 Q. Let me finish. Do you know whether or not
3 David Burton actually read any of the
4 texts that you've identified as texts used
5 in Kansas?

6 A. No.

7 Q. Do you know what David Burton's reading
8 habits were?

9 A. He said in his deposition that he
10 occasionally read the Emporia Gazette. I
11 believe he said in another section that he
12 occasionally read Time, and if I'm not
13 mistaken, Sports Illustrated.

14 Q. Do you know when David Burton occasionally
15 read the Emporia Gazette?

16 A. He didn't say.

17 Q. Do you know?

18 A. No.

19 Q. Do you know when he occasionally read
20 Time?

21 A. I don't recall what the context of that
22 was, no.

23 Q. Do you know when he occasionally read
24 Sports Illustrated?

25 A. No.

Produced by RJRTC
in
HUMPHREY

- 1 Q. Are you aware of any other magazines or
2 newspapers or books that David Burton
3 read?
- 4 A. No.
- 5 Q. Are you aware of David Burton's television
6 viewing habits?
- 7 A. What he said in his report, he didn't
8 watch much TV.
- 9 Q. So to your understanding in the 1950s,
10 David Burton didn't watch much TV?
- 11 A. That's what he said.
- 12 Q. Is that true in the Sixties?
- 13 A. I think that's what he said, too, for the
14 Sixties.
- 15 Q. Okay. I'm over now on Page 3. Have you
16 taught in a public high school or junior
17 high school?
- 18 A. Have I?
- 19 Q. Yes.
- 20 A. No.
- 21 Q. Have you known anyone who has?
- 22 A. My wife.
- 23 Q. Is that right? You say here at the bottom
24 of the paragraph that comes over from
25 Page 2, "Besides textbooks, teachers in

1 the 1940s and 1950s also began to use
2 visual materials about smoking, including
3 educational films, in classroom
4 presentations."

5 Do you know, professor, whether or
6 not educational films were ever used in
7 any school David Burton attended?

8 A. No.

9 Q. The next section at the bottom of the
10 page, you make a statement here that says,
11 "Invariably, these groups stressed that
12 smoking, once started, could be difficult
13 to quit."

14 Do you see that?

15 A. Yes.

16 Q. Did they indicate -- these groups, did
17 they indicate why smoking might be
18 difficult to quit?

19 A. Well, different groups would talk about
20 different items, but it would usually be
21 associated in some way with tobacco and
22 nicotine.

23 Q. Generally, it's your testimony these
24 groups would suggest --

25 A. They would tell --

1 Q. Let me finish. Would suggest that
2 nicotine makes it difficult to quit
3 smoking; is that your testimony?

4 A. Or they would talk about tobacco as a
5 narcotic, and they would say in turn that
6 the narcotizing qualities would make it
7 difficult to quit.

8 Q. Do you know if tobacco is a narcotic?

9 A. I'm not a scientist.

10 Q. You don't know one way or the other?

11 A. No, I don't.

12 Q. Are you familiar with any scientific
literature that addresses --

13 A. No.

14 Q. Whether or not nicotine is a narcotic?

15 A. Am I familiar? No, I'm not a scientist.

16 Q. All right. Page 4, the first sentence
17 in (C.)" you say, "During the early 1890s
18 the WCTU mounted a national petition drive
19 calling for a constitutional amendment
20 that would prohibit the manufacture or
21 sale of cigarettes in the United States."

22 Were the reasons for that petition
23 drive all of the reasons you gave me this
24 morning when we were talking about the
25

Produced by RRTC

- 1 themes in the anti-tobacco movement in the
2 early twentieth century?
- 3 A. Yes, they would be emphasized in different
4 ways, but this came primarily out of the
5 WCTU. So it would have to do not only
6 with health, but moral questions in a
7 matter of preserving the good health of
8 the family.
- 9 Q. Was that the emphasis of the WCTU
10 moralizing about tobacco?
- 11 A. Well, the WCTU had a department in which
12 Lucy Page Gaston played a prominent part.
13 The WCTU divided itself into a variety of
14 departments. She felt that they weren't
15 pushing hard enough on the issue, so she
16 went out on her own during the 1890s. But
17 I would say, yes, the purpose of this
18 petition drive was to protect health,
19 hearth, and home.
- 20 Q. Was the moral dimension the most important
21 dimension to Gaston?
- 22 A. Oh, I think health was very important to
23 her, too.
- 24 Q. Okay. Well, was health important because
25 of its effect on character, or was it

52005 1933

1 important for some reason having to do
2 with diseases that one might get from
3 cigarette smoking?

4 A. I'm sure all of those factors came into
5 play.

6 Q. None more important than the other?

7 A. That's very difficult to say.

8 Q. Okay. Then, let's talk about the court
9 cases you address on Pages 4 and 5. Did
10 any of these court cases find that the
11 tobacco companies were liable for harms
12 caused by their product?

13 A. No, not so far as I know.

14 Q. Do you know whether or not the findings of
15 the court in these cases were made
16 available to the public?

17 A. The findings in the case of Kansas was
18 certainly a major point, a focal point of
19 attention in Kansas in 1920. It received
20 tremendous newspaper coverage as to
21 whether the prohibitory law in Kansas
22 would continue or whether it would be
23 struck down by the State supreme court.

24 Q. I take it you're talking about the
25 Nossaman case?

1 A. Yes, the Nossaman case.

2 Q. What about the others? Are those findings
3 made available to the respective public?

4 A. Those particular findings, such as Austin
5 v. Tennessee, I have really no way of
6 knowing.

7 Q. Is the same true for the Ross case; you
8 don't know whether the findings were made
9 available to the public?

10 A. The Ross case received extensive newspaper
11 coverage in the Kansas City area. There
12 were several articles in the Kansas City
13 newspapers about the Ross case.

14 Q. Were those articles about the findings at
15 the outcome of the Ross case, what the
16 Court held, or what the jury --

17 A. What the Court held?

18 Q. Yes.

19 A. I believe at least one article did deal
20 with that that I read.

21 Q. What did the Court hold in Ross?

22 A. Well, we would have to go find the
23 article. I can't remember specifically
24 what the Court held. It certainly did not
25 sustain Ross' claim.

1 Q. So the defendant was not found liable for
2 injury caused by cigarettes; right?

3 A. I would have to guess, yes.

4 Q. And that information was communicated to
5 the public?

6 A. Yes.

7 THE WITNESS: Can we take
8 about a five-minute break or maybe
9 a ten-minute break?

10 MR. LEYH: Sure.

11 (A short recess was taken.)

12 Q. (BY MR. LEYH) Ford's Little White Slaver,
13 you refer to it on Page 6.

14 A. Yes.

15 Q. Did Ford's view of tobacco include this
16 moral dimension that we've talked about
17 that it was bad for your character?

18 A. Yes.

19 Q. Okay. Who is Michael O'Shea? What's he a
20 professor of; do you know?

21 A. He was a professor of education at the
22 University of Wisconsin specializing in
23 health-related issues. He was also a
24 textbook writer. His textbooks were used
25 widely throughout the United States. He

1 worked closely with John Harvey Kellogg,
2 and they co-authored together. These
3 texts, some of them were used in the
4 Kansas schools.

5 Q. These texts that O'Shea and Kellogg wrote
6 together included criticism of tobacco on
7 moral grounds?

8 A. Yes.

9 Q. Okay. Looking at the medical stuff, "G.)"
10 Page 7, did you see any references in your
11 search of the literature, references
12 before 1960 to a risk of losing your legs
13 from cigarette smoking?

14 A. Any references before 1960?

15 Q. Yes.

16 A. Yes.

17 Q. Okay. What did you see in that regard?

18 A. Good Health Magazine had a number of
19 references to circulatory problems related
20 to smoking; the article that we spoke
21 about earlier summarizing cases relating
22 to whatever that term is, thromboangiitis
23 obliterans or Buerger's disease, from the
24 mid-1930s. I can't give you a specific
25 number but the answer is yes. We would

1 have to go through the material.

2 Q. All right. And in the Good Health
3 Magazine article --

4 A. Yes.

5 Q. -- did they discuss amputation or limb
6 loss in some direct way?

7 A. Yes.

8 Q. And approximately what year was that, if
9 you know?

10 A. Well, if I recall correctly, that article
11 came out in the mid-1930s, so that Good
12 Health followed the medical literature and
13 tried to get the word out to the public
14 more generally. So that article would
15 also be in the mid-1930s.

16 Q. You said it followed the medical
17 literature; is that what you said?

18 A. Good Health Magazine, that was one of its
19 purposes was to summarize medical
20 literature that would be appearing in more
21 specialized academic journals.

22 Q. Okay. Do you know the disease that Good
23 Health Magazine said was a disease that
24 caused amputations?

25 A. In that particular article, that was

1 Buerger's disease or the thromboangiitis
2 obliterans.

3 Q. Do you know prior to 1960 whether or not
4 there was information in the public
5 domain -- strike that -- there was
6 information in this medical research and
7 writings category that attributed
8 amputations to some disease other than
9 Buerger's disease?

10 A. No, I'm not really aware of it. I don't
11 recall anything.

12 Q. Okay. How about after 1960?

13 A. With respect to Buerger's disease or with
14 respect to --

15 Q. Let me rephrase the question. Are you
16 aware of -- other than what you've already
17 told me, are you aware of any other
18 sources that suggest that you can lose
19 your legs, have your legs amputated,
20 because of a disease attributable to
21 smoking?

22 A. Yes, there was a report in -- there was a
23 statement in Consumer Reports in 1953 that
24 I recall to that effect.

25 Q. And what disease was identified there as

1 potentially causing amputation?

2 A. Peripheral vascular disease.

3 Q. Okay. Any other sources of information
4 about amputation and disease at any point
5 in time?

6 A. Amputation and disease, there were
7 articles in Reader's Digest. Let me give
8 you two that come to mind, "Nicotine
9 Knockout" by Gene Tunney, specifically
10 mentioned Buerger's disease and
11 amputations.

12 Q. Is this in Reader's Digest?

13 A. Yes, the year I believe is 1940. It may
14 be 41, but I'm almost sure it's '40.

15 Q. What's Buerger's disease and amputations?

16 A. Yes.

17 Q. All right.

18 A. January of 1950, an article by Riis which
19 I believe is mentioned somewhere in the
20 report also in Reader's Digest. The title
21 of the article is "How Harmful Are
22 Cigarettes?" As I recall, that article
23 also addresses circulatory problems and
24 mentions Buerger's disease specifically.

25 Q. In the context of amputations?

1 A. Yes, as I remember.

2 Q. All right. Do you know whether or not --
3 strike that.

4 Who is the readership for Good
5 Health?

6 A. Readership for Good Health, it's very
7 difficult to say. There are no figures on
8 its circulation, but it was probably in
9 the 25,000. That's what I read in one
10 book, 25,000-area per issue, something
11 like that.

12 Q. What book did you read that in?

13 A. I really can't say. I don't remember.

14 Q. Was it a lay readership?

15 A. Yes, primarily it was. I don't know how
16 else to state it. It was sort of like the
17 Prevention magazine of its day. Let's get
18 the word out. Here are problems. And it
19 had, between 1900 and 1953, Good Health
20 Magazine had over 125 articles on smoking,

21 heart disease, circulatory problems,
22 vascular problems, so on and so forth.

23 Q. Do you know whether it was available in
24 Emporia, Kansas, when David Burton was
25 living there?

1 A. The information that would be contained in
2 Good Health Magazine would have been
3 available in the textbooks that would have
4 possibly been used in the Emporia schools.

5 Q. And those are the textbooks that you've
6 already identified or we've already talked
7 about?

8 A. Yes.

9 Q. These are the same textbooks that you
10 can't with any certainty say that were
11 ever used in any school David Burton went
12 to?

13 A. That's correct.

14 Q. Do you know whether or not David Burton
15 ever read the Reader's Digest?

16 A. No.

17 Q. This subject of public awareness that
18 you're addressing in your report, does
19 that vary according to socioeconomic
20 status?

21 A. I don't have any evidence to that effect.

22 Q. Have you looked into that at all, ever?

23 A. Not into that particular question, so I'd
24 say, no.

25 Q. Do you know whether or not public

1 awareness levels vary according to race?

2 A. I haven't looked into that question.

3 Q. Do you know whether or not there's even
4 literature on that subject?

5 A. No.

6 Q. The bottom of Page 8, and it could almost
7 be anywhere, there's a reference to
8 cardiovascular disease. Do you think that
9 the public understood what cardiovascular
10 disease was in the Fifties?

11 A. Yes.

12 Q. What do you think their understanding of
13 cardiovascular disease was?

14 A. That you would have problem with your
15 heart or arteries or some type of
16 circulatory problems relating to your
17 heart, cardiovascular system.

18 Q. Do you think the ability to understand the
19 meaning of the term cardiovascular disease
20 would depend upon one's racial background
21 or cultural background?

22 A. No.

23 Q. Or socioeconomic status?

24 A. No.

25 Q. How about gender?

1 A. No.

2 Q. Now, with respect to television over on
3 Page 9, I'll introduce that subject.
4 You're talking about Murrow, and you say
5 that television quickly emerged as another
6 major source for the dissemination of
7 information about the possible health
8 consequences. Weren't there also a lot of
9 ads on television that touted smoking in
10 the Fifties?

11 A. I suppose there were.

12 Q. You didn't look at those I think you said;
correct?

13 A. No, I didn't.

14 Q. Did you ever watch the old Perry Como
15 Show? I don't know if you're old enough.

16 A. I'm old enough, but I don't remember. I
17 may have missed it because it may have
18 been on too late for me and Mom made me go
19 to bed, like, at 8:00 o'clock at night,
20 that sort of thing.

21 Q. So you wouldn't know about any smoking
22 going on on that show?

23 A. Do I remember seeing that? No, I don't
24 remember that I watched that show.
25

- 1 Q. Do you have any information about whether
2 or not on that show there was smoking
3 going on?
- 4 A. On the Perry Como Show?
- 5 Q. Yes.
- 6 A. No, I really don't.
- 7 Q. Did you ever listen to the old Arthur
8 Godfrey radio shows?
- 9 A. I don't remember. I remember not
10 listening to Godfrey. I remember he had a
11 show, what is it called, the Amateur
12 Hour or something, on TV. I don't know if
13 that's what it was called. I sort of
14 vaguely remember that show.
- 15 Q. Do you remember what Arthur Godfrey said
16 in his radio show in the Fifties about
17 cigarette smoking?
- 18 A. I know Arthur Godfrey had lung cancer, but
19 I don't remember what he said.
- 20 Q. At any point in time, right, about
21 cigarette smoking, I mean?
- 22 A. No.
- 23 Q. Do you know from your investigations of
24 David Burton whether or not he read the
25 Kansas City Star?

1 A. No.

2 Q. Or the Springfield, Missouri, Leader and
3 Press?

4 A. No.

5 Q. I'm looking at Page 12, and there's a
6 reference to the context of the Gallup
7 Poll question at the top of the page.

8 A. Yes.

9 Q. "The American Cancer Society" --

10 A. Yes.

11 Q. "reporting the results of a study." Do
12 you know what that study said?

13 A. Yes, that is the final report of E. Cuyler
14 Hammond, C-u-y-l-e-r, and Daniel Horn's
15 study sponsored by the American Cancer
16 Society that got tremendous press coverage
17 during the Fifties. The first reports
18 came out in 1954, a study of 180,000 males
19 between the ages of 50 and 70, and the
20 conclusions were initially announced in
21 1954. And I believe they are described in
22 here with extensive press coverage, and
23 then the final summaries appeared in the
24 press in 1957 and I presume on television
25 as well.

1 Q. Did the American Cancer Society and the
2 American Heart Association and the
3 National Heart Institute issue a statement
4 in the late 1950s that said research was
5 not conclusive on cigarettes and disease?

6 A. Did they -- could you --

7 Q. Did those organizations, the American
8 Cancer Society --

9 A. Oh, the American Cancer Society?

10 Q. No. I think it's the American Cancer
11 Association, together with the National
12 Heart Institute and the American Heart
13 Association, and are you aware of any
14 statement the three of them issued?

15 A. No, I'm not.

16 Q. Okay. Moving to Page 13, you are
17 referring to a Burney statement at the top
18 of the page. I think you mentioned this
19 earlier.

20 A. Yes.

21 Q. Do you know what the American Medical
22 Association's position on that was, on the
23 Burney statement?

24 A. Well, with the Burney statement here --
25 "Our position is that we have informed

1 the public through the excellent coverage
2 of the press, radio, and TV." That's a
3 statement of information.

4 In the Burney statement to that
5 effect appears somewhere in the report
6 that we have increasing amounts of
7 evidence that smoking cigarettes may be a
8 cause or a causative agent, I don't
9 remember the exact wording, of cancer.

Q. And the question is: What was the AMA's
10 position on that?

A. What, on whether it was disseminated to
11 the general public or not?

Q. No, on whether or not it was a cause of
12 it?

A. The AMA didn't have a position at that
13 point in time.

Q. Did they consider that issue?

A. Well, I'm sure they probably did at
14 various points along the way.

Q. Do you know when they developed the
15 position?

A. Well, I know the vice president of the AMA
16 in 1964, a man by the name of Blasingame
17 said with respect to this question that
18
19
20
21
22
23
24
25

1 the American public has been repeatedly
2 warned about possible health problems and
3 that it's a matter of public and common
4 knowledge. I do know that.

5 Q. And he was a smoker, wasn't he?

6 A. I don't have any idea.

7 Q. You don't know?

8 A. I don't know.

9 Q. Okay. Did Burney say in the late Fifties
10 that the tobacco companies had adequately
11 warned about the health risks?

12 A. Burney said in 1957 that, and I don't
13 remember his exact words, that we have
14 adequately warned the public. We've put
15 the information out there to the public.

16 Q. The question is: Did he say that the
17 tobacco companies had adequately warned?

18 A. I don't remember that he commented on the
19 tobacco companies.

20 Q. All right. Do you know if the '64 Surgeon
21 General's report commented on whether the
22 tobacco companies had adequately warned?

23 A. I don't recall that it did, that it
24 commented on that.

25 Q. In Paragraph 4, Page 13, you make a

1 statement, "Such articles took for granted
2 that persons wanted to learn about methods
3 to help break their habit."

4 A. I'm sorry, which page?

5 Q. Paragraph 4, Page 13.

6 A. Oh.

7 Q. It's, like, the third sentence there.

8 "Such articles took for granted that
9 persons wanted to learn" --

10 A. I see.

11 Q. Do you see that?

12 A. Yes.

13 Q. In those articles, did it indicate why
14 people wanted to break their habit?

15 A. Well, the general theme that would run
16 through these kinds of articles is that I
17 understand I can develop significant
18 health problems. And my life will be
19 shortened by smoking, so I would like to
20 find out about quitting.

21 Q. So it's your testimony that these
22 articles, in any case, didn't suggest
23 people wanted to quit for reasons having
24 to do with costs or the dirtiness of the
25 habit or maybe immorality?

1 A. Sometimes those issues would come up, too.

2 Q. Did they come up as often as the health
3 issue?

4 A. I didn't take an exact account, so I can't
5 really answer that question.

6 Q. Do you know when the first scientific
7 studies addressing whether or not nicotine
8 is a pharmacologically active agent were
9 undertaken?

10 A. No, I'm not a scientist. I can't really
11 answer that question.

12 Q. Okay. Do you know whether or not -- do
13 you know when the first studies,
14 scientific studies, addressing whether or
15 not nicotine is a psychoactive drug were
16 undertaken?

17 A. I would have to give you the same
18 response.

19 Q. Paragraph 5, Page 14, you note a "rapid
20 shift of filter-tipped cigarettes during
21 the 1950s."

22 A. Yes.

23 Q. Why was there such a shift?

24 A. There was a cancer and/or health scare in
25 the 1950s. And one characteristic of that

1 scare in terms of information let out to
2 the public related to these experimental
3 studies in which cigarette tar would be
4 painted on the backs of mice, and tar was
5 being defined at that time as the probable
6 source of lung cancer. As a net result,
7 that information circulating through the
8 public, I would say that people responded
9 to that medical information and that was a
10 primary reason for the shift to filter-tip
11 cigarettes.

12 Q. People thought it was safer to smoke
13 filter-tips?

14 A. People thought it would be safer to smoke
15 filter-tip cigarettes.

16 Q. What did the tobacco company say, if
17 anything, if you know, about tar on the
18 backs of mice causing cancer in humans?

19 A. Well, I really don't know. I don't recall
20 any specific quotations.

21 Q. Okay. And were there any cigarette
22 companies that were advertising in the
23 Fifties the relative safety of filter-tip
24 cigarettes?

25 A. I really can't tell you.

1 Q. You didn't see any such evidence in your
2 investigation?

3 A. I've said before I didn't look at
4 advertisements, per se.

5 Q. Let me refer you to Page 15, a couple of
6 lines down from the top of the page. You
7 state, "Thus, the public was not only
8 aware but also had a common understanding
9 of the possible habit-forming qualities
10 and health consequences of smoking."

11 How early on did the public have a
12 common understanding of the possible
13 habit-forming qualities and health
14 consequences of smoking?

15 A. How early on?

16 Q. Yes.

17 A. I would say certainly by the 1870s and
18 1880s, if not before.

19 Q. And that's true in Kansas?

20 A. Would that be true in Kansas?

21 Q. Yes.

22 A. Well, the Kansas materials, I would say
23 certainly by 1900, if not before, in the
24 case of Kansas based on the materials I've
25 looked at.

- 1 Q. Okay. On Page 16, you identify among the
2 things you read Mr. Burton's deposition?
3 A. Yes.
4 Q. Did you see anything in Mr. Burton's
5 deposition to suggest he read any of the
6 particular sources of information that you
7 identified in your report as sources for
8 the public awareness about the health
9 risks of smoking?
10 A. He stated he read the Emporia Gazette
11 occasionally.
12 Q. Okay. Anything else?
13 A. ~~Time~~ magazine.
14 Q. Anything else?
15 A. Well, among those that I looked at, I
16 didn't look at Sports Illustrated.
17 Q. Okay.
18 A. I don't remember any other publications
19 that he said he read.
20 Q. ~~Time~~, and the Emporia Gazette
21 occasionally?
22 A. Yes.
23 Q. And you've testified, I think, about those
24 already, haven't you?
25 A. Yes.

1 Q. How many hours have you spent working on
2 this matter, professor?

3 A. To date?

4 Q. Yes.

5 A. Well, I would say 100 to 110,
6 approximately.

7 Q. Have you got written statements that you
8 prepare from time to time?

9 A. Yes.

10 Q. Are they in your file?

11 A. No.

12 Q. Why not?

MS. McDOLLE: Because I told
him not to. When you're prepared
to give us all of the statements
from your experts, we'll do the
same for you.

MR. LEYH: Well, I called for
the production of Professor
Martin's statements with respect to
his time. I don't know, counsel,
of any statement by an expert of
ours that is in existence that we
haven't provided.

MR. McDOLLE: Well, you

1 promised me, for example, Peter
2 Tutor that you would get them for
3 me from your files, and Dr. McClain
4 who keeps no record of his --

5 MR. LEYH: I will get you
6 whatever we have, whatever they
7 have with --

8 MS. McDOLLE: That's fine.

9 MR. LEYH: Let me finish.
10 With respect to Dr. Tutor and
11 Dr. McClain.

12 I just simply called for the
13 production of Professor Martin's
14 statements.

15 Q. (BY MR. LEYH) Now, is there anything else
16 that you were asked not to bring today?

17 A. No. I'm not quite sure what the -- I
18 don't think I understand the question.

19 Q. Counsel just indicated that she told you
20 not to bring your statements.

21 A. That's correct.

22 Q. Did counsel, either one of these or any
23 other lawyer, tell you not to bring
24 anything else?

25 A. No.

1 Q. All right. How much money have you been
2 paid for your work on this case?

3 A. My rate is \$195 an hour. That's stated in
4 there.

5 Q. How much money have you been paid for your
6 work in this case?

7 A. Well, somebody have a calculator?
8 \$20,000, \$25,000, if I calculated that
9 correctly.

10 Q. And --

11 A. Did I calculate it correctly? I don't
12 know. I'm sorry. I'm not a
13 mathematician.

14 Q. You're multiplying 195 by what?

15 A. Let's say 110 to date. 200 times 110,
16 just a second.

17 MS. McDOLE: When you say "to
18 date," are you including today's
19 deposition?

20 THE WITNESS: No.

21 Q. (BY MR. LEYH) Thanks for that
22 distinction.

23 A. This is a guess. I didn't go through my
24 bills last night. This is a tough one for
25 me. Let's say between \$22,000 and

1 \$23,000.

2 Q. Are there any bills you've submitted
3 regarding what you have not been paid to
4 date?

5 A. This is all an estimate on my part. I
6 didn't look up this information. I
7 submitted a bill approximately a week ago,
8 something like that. I would hope that
9 would be a rough number for you.

10 Q. It is. You've told me that you haven't
11 had any publications on tobacco; correct?

12 A. Yes.

13 Q. Who would you identify as the leading
14 historian, or among the leading historians
15 of tobacco in the United States?

16 A. Virtually no one.

17 Q. Really?

18 A. That's right.

19 Q. Okay. Obviously there are historians of
20 tobacco in America; correct? Maybe it's
21 not obvious.

22 A. No, it's not obvious because quite
23 seriously this is not a subject which you
24 have a number of specialists running
25 around to do a study of the history of

produced by RIRTC

in

1 tobacco in the United States. I think
2 that's reflected in the source material,
3 the secondary sources that I listed.

4 Q. All right. Are you aware of anyone, any
5 historian who you would regard as a
6 specialist on the subject of tobacco in
7 the United States?

8 A. A specialist on the subject of tobacco?
9 Well, there are some historians of early
10 American history who have written about
11 the tobacco trade in the Atlantic world.

12 Q. What are their names?

13 A. One is named -- what is his name? He
14 recently retired from the University of
15 Michigan. I'm not going to come up with
16 it for you. He did write a lot of stuff
17 on the tobacco trade as an economic
18 system. I'm sorry. The first name is
19 Jacob if that means anything, but I know
20 that I'm mixing up last names, Jacob
21 Price.

22 Q. Can you think of any other historians you
23 would consider specialists in tobacco in
24 the United States?

25 A. Well, I would list Robert Sobel. I don't

produced by RJRTC

1 know whether he's still living or not. He
2 wasn't a young person when he wrote the
3 book They Satisfy, which I would think
4 would be considered a standard history of
5 the cigarette in the United States.

6 Q. Is a standard history different than a
7 social history?

8 A. Well, he looks into -- he goes back and
9 looks into the rise of the industry. He
10 goes back and talks about various kinds of
11 tobacco products that were available in
12 the marketplace. Then he carries the
13 story forward through time, but he
14 concentrates on primarily the history of
15 the cigarette.

16 Q. Is that different than a social history?

17 A. It can be a form of social history.

18 Q. Okay. Are there people in your profession
19 known as social historians who study
20 tobacco?

21 A. Well, I'm having a difficult time coming
22 up with anyone.

23 Q. I didn't ask if they were a specialist or
24 did you regard them as that, but just
25 persons in your profession who are social

52005 1960

Produced by R.J.R.T.C.
in
HUMPHREY

- 1 historians who studied tobacco?
- 2 A. It's obviously not a booming field. I
- 3 can't really think of anyone. I mean,
- 4 what is the name of the fellow at
- 5 Northwestern? He's written a book on
- 6 tobacco culture, but that doesn't have to
- 7 do with tobacco; it has to do with the
- 8 lifestyles of the great planters.
- 9 Q. The what?
- 10 A. The great planters in Virginia, the great
- 11 tobacco planters in Virginia in the
- 12 eighteenth century.
- 13 Q. What about John Burnham who is on your
- 14 list of source materials? Isn't he a
- 15 social historian who studies tobacco?
- 16 A. Among other things, yes. He's a historian
- 17 of health and medicine.
- 18 Q. So he's one, right, in answer to my
- 19 question?
- 20 A. Well, you had asked me about people who
- 21 studied, as I remember, exclusively
- 22 tobacco, and that certainly isn't the case
- 23 with Burnham.
- 24 Q. I'm sorry. I didn't mean to ask that. I
- 25 don't think I used the word "exclusively."

Produced by RJRTC
in
HUMPHREY

- 1 Let me re-ask the question with that
2 clarification. I don't mean exclusively,
3 but are you aware of any social historians
4 who studied tobacco?
- 5 A. Burnham has written on the subject, yes.
- 6 Q. Anybody else? Is he the leading one?
- 7 A. Well, if there's only one, I guess you're
8 leading.
- 9 Q. I guess so. Is there only one?
- 10 A. I'm not coming up with other names for
11 you. I'm sorry.
- 12 Q. Allen Brandt?
- 13 A. I'm not even sure he's a historian.
- 14 Q. So Burnham is the only one you can think
15 of right now, and he's the leading one?
- 16 A. He's it.
- 17 Q. Now, you're general editor of the book
18 series on the American Social Experience
19 it says in your CV?
- 20 A. That's correct.
- 21 Q. What's your role as general editor?
- 22 A. It primarily would be to help New York
23 University Press locate manuscripts for
24 publication in that series.
- 25 Q. Did you help them locate Burnham's book in

1 that series?

2 A. No, actually Burnham sent that manuscript
3 in.

4 Q. Did you read it prior to the time it was
5 published?

6 A. Yes.

7 Q. Did you comment on it to him?

8 A. Did I comment on it to him?

9 Q. Yes.

10 A. I commented on it to the publisher. I
11 said two things about it. I find the
12 argument verging on the unbelievable, if
13 not ridiculous. I thought it was one of
14 the worst written manuscripts that I ever
15 saw.

16 Q. And when you say "the argument," are you
17 referring to the argument on smoking?

18 A. No, the general argument in the book about
19 the inversion of culture and so on and so
20 forth.

21 Q. So that's the argument you regard as --

22 A. Well, you go into each one of the
23 categories, and I could pretty much say
24 the same thing. But I don't know when
25 that was, five or six years ago, something

1 like that.

2 Q. Did you recommend that it shouldn't be
3 published in the series?

4 A. We had a very vigorous and strong debate
5 about that, and I was outvoted. And that
6 leaves me in the position where I have to
7 decide whether or not I want to leave the
8 series editorship, something that I spent
9 years developing or go along with what the
10 publisher wanted.

11 They wanted it because of Burnham's
12 name, frankly, because his name would help
13 sell books. So many of the books are
14 first-time authors, and they have to go
15 out on their own merit. You don't get any
16 market play because the authors are
17 totally unknown. There are only two I
18 believe in the whole series done by
19 individuals. Peter Sterns at Cornell
20 University is considered as one of the
21 major players in modern European social
22 history and Burnham.

23 Q. Do you know if Burnham was ever made aware
24 of your feelings about his book?

25 A. No, I don't.

1 Q. You've never talked to him about it?

2 A. I have met him on two occasions to say,
3 "Hello. How are you?"

4 Normally, whatever I write about a
5 manuscript anyway, this is part of the
6 procedure, will be passed on to the author
7 as an anonymous reviewer, so he or she
8 would not know that I necessarily had
9 prepared the comments.

10 Q. Well, if you can recall in your -- you do
11 believe you prepared some anonymous
12 comments for Burnham; is that right?

13 A. I believe so, yes.

14 Q. In those anonymous comments, do you recall
15 all you said this book should not be
16 published as part of our series?

17 A. I mean, I don't recall at this point what
18 I said. I didn't think it was a good
19 manuscript. The press wanted it, and I
20 conceded the point.

21 Q. I want to ask you if you agree with this
22 statement, professor: "Physicians,
23 therefore, were living in a culture in
24 which opinion leacers and mass media not
25 only accepted tobacco use but beginning in

1 the 1920s increasingly looked with
2 disfavor on any attempts to condemn
3 smoking and drinking on health or on moral
4 grounds."

5 A. Read it a second time. I'm sorry.

6 Q. "Physicians, therefore, were living in a
7 culture in which opinion leaders and mass
8 media not only accepted tobacco use but
9 beginning in the 1920s increasingly looked
10 with disfavor on any attempts to condemn
11 smoking and drinking on health or on moral
12 grounds."

13 A. No, I don't think I agree with that.

14 Q. Is that because you think opinion leaders
15 and mass media were more sympathetic to
16 tobacco?

17 A. I would certainly think that individuals
18 like Henry Ford, Thomas Edison, a whole
19 variety of individuals who were major
20 employers in the United States who were
21 saying we won't hire you if you smoke
22 cigarettes, I would certainly include
23 those individuals among opinion leaders.

24 Irving Fisher was a major opinion
25 leader in the early twentieth century, an

1 economist at Yale. He is speaking out
2 regularly against tobacco use.

3 David Jordan was a major educator
4 in the early twentieth century, the
5 president of Stanford University, well
6 known as the individual who may have
7 brought Stanford up as a major
8 institution, repeatedly speaking out
9 against smoking.

10 I would say all of these are major
11 opinion leaders, and whoever that source,
12 somehow neglected to go into their
13 research.

14 Q. And you would say that the major opinion
15 leaders you just identified are, in fact,
16 representative of the opinion leaders of
17 the day?

18 A. Well, I named two industrial giants, a
19 college president, and a major economist.

20 Q. Is that a "yes"?

21 A. Yes.

22 Q. Let me ask if you agree with this
23 statement: "By the mid-1930s, in medical
24 science, as much as in the mass media,
25 cigarette smoking was accepted as the norm

1 exactly in the way that Troyer and Markle
2 have shown was true for the culture as a
3 whole, the bulk of M.D.s as cultural
4 exemplars in smoking. If doctors did not
5 stop smoking, how could anyone take
6 seriously statements that smoking was
7 harmful?"

8 A. I would have to see the source on that to
9 see whether the author has any evidence
10 that doctors smoked as much, if not more
11 than, the population, and I don't know
12 whether that evidence is there.

13 Q. Have you ever looked into the question as
14 to whether or not doctors smoke more than
15 anybody else?

16 A. No, I haven't looked into that question.

17 Q. And you're aware of no evidence on that
18 question today?

19 A. That quote was from the 1930s. I think
20 that was framed in the context --

21 Q. I mean, as you sit here today, are you
22 aware of any evidence about whether
23 doctors smoked more than anybody else?

24 A. No, I'm not aware of any evidence.

25 Q. Professor Martin, have you got an opinion

1 as to whether or not the medical community
2 was slow to come to realize that cigarette
3 smoking causes cancer because they were
4 persuaded that cancer might be hereditary?

5 MR. KACZYNSKI: Object to the
6 form.

7 A. There were a lot of different theories
8 floating around in the Thirties and the
9 Forties and the Fifties with respect to
10 the sources of cancer; and one of them,
11 one of the theories would be the
12 hereditary theory, but I would read that
13 as an overstatement.

14 Q. (MR. LEYH) Okay. Do you know if
15 physicians tended to be skeptical about
16 claims that smoking was unhealthy in the
17 Thirties, Forties, and Fifties because
18 they associated with such claims,
19 moralizing, that some in the anti-tobacco
20 movement were doing?

21 A. No, I really can't answer that question.

22 Q. Why not?

23 A. I haven't looked at the question.

24 Q. You just don't have any evidence to give
25 you --

Produced by RJRTC

1 A. Well again, to go back, my assignment was
2 to deal with issues concerning the public
3 awareness, not to deal with the history of
4 the medical community. And that's -- I
5 didn't look into that particular area with
6 respect to what physicians, per se, were
7 doing.

8 Q. Can you call on your general knowledge as
9 a historian to answer that question?

10 A. Well, repeat the question.

11 Q. Were physicians in the Thirties and
12 Forties and Fifties reluctant to believe,
13 skeptical about the allegations that
14 cigarette smoking causes cancer because
15 they associated moral judgment with those
16 allegations; namely, the people making
17 them were moralizing? Do you know?

18 A. No, I honestly don't know, but I would say
19 if I had to guess that would come apart
20 upon any reasonable research
21 investigation.

22 Q. But you're guessing when you say that?

23 A. Yes.

24 Q. Okay. Do you agree with this: "Before
25 the 1950s, most physicians simply did not

1 take seriously the idea that smoking
2 represented a threat to the cardiovascular
3 system except in very exceptional cases."

4 A. I would completely disagree with that.

5 Q. For reasons which you've already testified
today?

7 A. Yes.

8 Q. Do you agree that only in the 1950s did
9 medical advisers of the American Heart
10 Association begin to take tobacco
11 seriously as a public health problem?

12 A. I don't even know -- I'm not sure when the
13 American Heart Association was founded.

14 Q. Have you ever studied the American Heart
15 Association?

16 A. Not per se, not in particular.

17 Q. Do you agree that "In the case of smoking
18 before the 1950s, American doctors tended
19 to reinforce, not question, the idea that
20 every adult smoked"?

21 A. No, I don't agree with that.

22 Q. You've never looked into the habits of
23 physicians, have you, in terms of smoking?

24 A. No, I've stated that repeatedly.

25 Q. Why do you disagree?

- 1 A. Because I think that's an unprovable
2 assertion.
- 3 Q. Do you have any facts to suggest it's
4 wrong?
- 5 A. Does the author have any evidence to
6 suggest it's right?
- 7 Q. Well, we can interrogate the author at a
8 later time, but we're here talking to
9 you. And my question is, do you have any
10 facts to suggest the statement is wrong?
- 11 A. Read the statement again.
- 12 Q. I would be happy to. "In the case of
13 smoking before the 1950s, American doctors
14 tended to reinforce, not question, the
15 idea that every adult smoked."
- 16 A. I'm not even sure what it means, which
17 would make sense given the presumed
18 source.
- 19 Q. What is your presumed -- what's your
20 suspicion about the source?
- 21 A. Some of this sounds very familiar to me.
- 22 Q. You've read it before, have you?
- 23 A. I guess. It's been years.
- 24 Q. So you can't make sense of that statement;
25 is that your testimony?

52005 1972

1 A. I can't make sense of that. The doctors
2 are doing what?

3 Q. Reinforcing the idea that every adult
4 smoked?

5 A. By virtue of what?

6 Q. By virtue of it doesn't say.

7 A. It must be Burnham.

8 Q. You think it's Burnham?

9 A. I don't know who it is.

10 Q. Then you've read this article?

11 MS. McDOLLE: Well, ask him
12 for the article because he said
13 that you could have any document
14 you needed to help refresh your
15 memory.

16 A. Okay. Which article is this?

17 Q. (BY MR. LEYH) Have you read the Burnham
18 article?

19 A. The Burnham 1929/1964 comparison?

20 Q. That's right.

21 A. Yes.

22 Q. Do you recall anything in there about
23 whether or not physicians reinforced the
24 idea that every adult smoked?

25 A. I recall reading the article, but I don't

52005 1973

produced by R.J.R.T.C.

in

HUMPHREY

1 recall --

2 Q. Whether or not that was in there?

3 A. Well, it must have been in there if you're
4 reading from the article.

5 Q. I am reading from the article, but it may
6 not be Burnham.

7 A. What is the article? Let me ask you that.

8 MS. McDOLLE: Despite what he
9 promised at the beginning, he's not
10 going to tell you.

11 MR. LEYH: Let's be very
12 clear about this since counsel is
13 making an allegation of bad faith
14 which I think is most unfair and
15 unwarranted. As I recall what I
16 said to Professor Martin, if you
17 need to consult a document, do so.
18 I didn't say that I would provide
19 him with any documents that he
20 asked for. I am under no
21 obligation, as you know, to provide
22 him with documents from which I
23 might be reading.

24 MS. McDOLLE: Okay. It's my
25 mistake.

52005 1974

MR. LEYH: I think Professor Martin is well prepared to answer these questions.

Q. (BY MR. LEYH) Let me ask if you will agree with this, Professor Martin: When in 1928 the American Tobacco Company cited the authority of 20,697 doctors in an advertisement for Lucky Strike cigarettes, the number was plausible?

A. I guess, yes.

Q. You have no reason to disagree that American Tobacco said there were 20,000-something doctors in an advertisement for Lucky Strike cigarettes?

A. If there was such an advertisement, yes.

Q. Do you think that might reinforce the idea that smoking was okay?

A. Well given that individuals start learning at a very young age in this society that smoking isn't good for them, I don't know why they would believe that.

Q. The question, sir, is whether or not you have an opinion that whether in advertisements projecting doctors as smokers would reinforce to the public that

produced by RJRTC
in
HUMPHREY

- 1 smoking is healthy?
- 2 A. I would think it would have the exact
- 3 opposite effect and reinforce the idea
- 4 smoking may not be healthy.
- 5 Q. Really? Have you ever seen tobacco ads
- 6 with doctors in them?
- 7 A. Really, I mean --
- 8 Q. Ever, not just in the context --
- 9 A. I may have when I was a little kid, but I
- 10 don't recall.
- 11 Q. And it's your testimony that using a
- 12 doctor in an ad might very well have the
- 13 effect of suggesting to the consumer that
- 14 smoking is unhealthy?
- 15 A. Could have that effect, yes.
- 16 Q. And you believe it well might, don't you?
- 17 A. I said it could have.
- 18 Q. Okay.

THE WITNESS: Could we take
about a five-minute break?

MS. McDOLE: Sure.

MR. LEYH: Yes, sure.

(A brief recess was taken.)

52005 1976